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108TH CONGRESS  
2D SESSION

**H.R. 1417**

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IN THE SENATE OF THE UNITED STATES

MARCH 4, 2004

Received; read twice and referred to the Committee on the Judiciary

SEPTEMBER 29, 2004

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Copyright Royalty and  
5       Distribution Reform Act of 2004”.

6       **SEC. 2. REFERENCE.**

7       Except as otherwise expressly provided, whenever in  
8       this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-  
 2 sion, the reference shall be considered to be made to a  
 3 section or other provision of title 17, United States Code.

4 **SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.**

5 (a) IN GENERAL.—Chapter 8 is amended to read as  
 6 follows:

7 **“CHAPTER 8—PROCEEDINGS BY**  
 8 **COPYRIGHT ROYALTY JUDGES**

“Sec.

“801. Copyright Royalty Judges; appointment and functions.

“802. Copyright Royalty Judgeships; staff.

“803. Proceedings of Copyright Royalty Judges.

“804. Institution of proceedings.

“805. General rule for voluntarily negotiated agreements.

9 **“§ 801. Copyright Royalty Judges; appointment and**  
 10 **functions**

11 “(a) APPOINTMENT.—The Librarian of Congress  
 12 shall appoint 3 full-time Copyright Royalty Judges, and  
 13 shall appoint one of the three as the Chief Copyright Roy-  
 14 alty Judge. In making such appointments, the Librarian  
 15 shall consult with the Register of Copyrights.

16 “(b) FUNCTIONS.—Subject to the provisions of this  
 17 chapter, the functions of the Copyright Royalty Judges  
 18 shall be as follows:

19 “(1) To make determinations and adjustments  
 20 of reasonable terms and rates of royalty payments as  
 21 provided in sections 112(c), 114, 115, 116, 118, 119  
 22 and 1004. The rates applicable under sections

1       ~~114(f)(1)(B), 115, and 116 shall be calculated to~~  
2       ~~achieve the following objectives:~~

3               ~~“(A) To maximize the availability of cre-~~  
4               ~~ative works to the public.~~

5               ~~“(B) To afford the copyright owner a fair~~  
6               ~~return for his or her creative work and the~~  
7               ~~copyright user a fair income under existing eco-~~  
8               ~~nomie conditions.~~

9               ~~“(C) To reflect the relative roles of the~~  
10              ~~copyright owner and the copyright user in the~~  
11              ~~product made available to the public with re-~~  
12              ~~spect to relative creative contribution, techno-~~  
13              ~~logical contribution, capital investment, cost,~~  
14              ~~risk, and contribution to the opening of new~~  
15              ~~markets for creative expression and media for~~  
16              ~~their communication.~~

17              ~~“(D) To minimize any disruptive impact~~  
18              ~~on the structure of the industries involved and~~  
19              ~~on generally prevailing industry practices.~~

20              ~~“(2) To make determinations concerning the~~  
21              ~~adjustment of the copyright royalty rates under sec-~~  
22              ~~tion 111 solely in accordance with the following pro-~~  
23              ~~visions:~~

24                      ~~“(A) The rates established by section~~  
25                      ~~111(d)(1)(B) may be adjusted to reflect—~~

1           “(i) national monetary inflation or de-  
2           flation; or

3           “(ii) changes in the average rates  
4           charged cable subscribers for the basic  
5           service of providing secondary trans-  
6           missions to maintain the real constant dol-  
7           lar level of the royalty fee per subscriber  
8           which existed as of the date of October 19,  
9           1976;

10          except that—

11           “(I) if the average rates charged cable  
12           system subscribers for the basic service of  
13           providing secondary transmissions are  
14           changed so that the average rates exceed  
15           national monetary inflation, no change in  
16           the rates established by section  
17           111(d)(1)(B) shall be permitted; and

18           “(II) no increase in the royalty fee  
19           shall be permitted based on any reduction  
20           in the average number of distant signal  
21           equivalents per subscriber.

22          The Copyright Royalty Judges may consider all  
23          factors relating to the maintenance of such level  
24          of payments, including, as an extenuating fac-  
25          tor, whether the industry has been restrained

1 by subscriber rate regulating authorities from  
2 increasing the rates for the basic service of pro-  
3 viding secondary transmissions.

4 “(B) In the event that the rules and regu-  
5 lations of the Federal Communications Com-  
6 mission are amended at any time after April 8,  
7 1976, to permit the carriage by cable systems  
8 of additional television broadcast signals beyond  
9 the local service area of the primary transmit-  
10 ters of such signals, the royalty rates estab-  
11 lished by section 111(d)(1)(B) may be adjusted  
12 to insure that the rates for the additional dis-  
13 tant signal equivalents resulting from such car-  
14 riage are reasonable in the light of the changes  
15 effected by the amendment to such rules and  
16 regulations. In determining the reasonableness  
17 of rates proposed following an amendment of  
18 Federal Communications Commission rules and  
19 regulations, the Copyright Royalty Judges shall  
20 consider, among other factors, the economic im-  
21 pact on copyright owners and users; except that  
22 no adjustment in royalty rates shall be made  
23 under this subparagraph with respect to any  
24 distant signal equivalent or fraction thereof rep-  
25 resented by—

1           “(i) carriage of any signal permitted  
2           under the rules and regulations of the Fed-  
3           eral Communications Commission in effect  
4           on April 15, 1976, or the carriage of a sig-  
5           nal of the same type (that is, independent,  
6           network, or noncommercial educational)  
7           substituted for such permitted signal; or

8           “(ii) a television broadcast signal first  
9           carried after April 15, 1976, pursuant to  
10          an individual waiver of the rules and regu-  
11          lations of the Federal Communications  
12          Commission, as such rules and regulations  
13          were in effect on April 15, 1976.

14          “(C) In the event of any change in the  
15          rules and regulations of the Federal Commu-  
16          nications Commission with respect to syn-  
17          dicated and sports program exclusivity after  
18          April 15, 1976, the rates established by section  
19          111(d)(1)(B) may be adjusted to assure that  
20          such rates are reasonable in light of the  
21          changes to such rules and regulations, but any  
22          such adjustment shall apply only to the affected  
23          television broadcast signals carried on those  
24          systems affected by the change.

1           “(D) The gross receipts limitations estab-  
2           lished by section 111(d)(1)(C) and (D) shall be  
3           adjusted to reflect national monetary inflation  
4           or deflation or changes in the average rates  
5           charged cable system subscribers for the basic  
6           service of providing secondary transmissions to  
7           maintain the real constant dollar value of the  
8           exemption provided by such section, and the  
9           royalty rate specified therein shall not be sub-  
10          ject to adjustment.

11          “(3)(A) To authorize the distribution, under  
12          sections 111, 119, and 1007, of those royalty fees  
13          collected under sections 111, 119, and 1005, as the  
14          case may be, to the extent that the Copyright Roy-  
15          alty Judges have found that the distribution of such  
16          fees is not subject to controversy.

17          “(B) In cases where the Copyright Royalty  
18          Judges determine that controversy exists, the Copy-  
19          right Royalty Judges shall determine the distribu-  
20          tion of such fees, including partial distributions, in  
21          accordance with section 111, 119, or 1007, as the  
22          case may be.

23          “(C) the Copyright Royalty Judges shall make  
24          a partial distribution of such fees during the pend-  
25          ency of the proceeding under subparagraph (B) if all

1 participants under section 803(b)(2) in the pro-  
2 ceeding that are entitled to receive those fees that  
3 are to be partially distributed—

4 “(i) agree to such partial distribution;

5 “(ii) sign an agreement obligating them to  
6 return any excess amounts to the extent nec-  
7 essary to comply with the final determination  
8 on the distribution of the fees made under sub-  
9 paragraph (B); and

10 “(iii) file the agreement with the Copyright  
11 Royalty Judges.

12 “(D) The Copyright Royalty Judges and any  
13 other officer or employee acting in good faith in dis-  
14 tributing funds under subparagraph (C) shall not be  
15 held liable for the payment of any excess fees under  
16 subparagraph (C). The Copyright Royalty Judges  
17 shall, at the time the final determination is made,  
18 calculate any such excess amounts.

19 “(4) To accept or reject royalty claims filed  
20 under section 111, 119, and 1007, on the basis of  
21 timeliness or the failure to establish the basis for a  
22 claim.

23 “(5) To accept or reject rate adjustment peti-  
24 tions as provided in section 804 and petitions to par-  
25 ticipate as provided in section 803(b)(1) and (2).



1           “(6) To determine the status of a digital audio  
2       recording device or a digital audio interface device  
3       under sections 1002 and 1003, as provided in sec-  
4       tion 1010.

5           “(7)(A) To adopt as the basis for statutory  
6       terms and rates or as a basis for the distribution of  
7       statutory royalty payments, an agreement con-  
8       cerning such matters reached among some or all of  
9       the participants in a proceeding at any time during  
10      the proceeding, except that—

11           “(i) the Copyright Royalty Judges shall  
12      provide to the other participants in the pro-  
13      ceeding under section 803(b)(2) that would be  
14      bound by the terms, rates, distribution, or other  
15      determination set by the agreement an oppor-  
16      tunity to comment on the agreement and object  
17      to its adoption as the basis for statutory terms  
18      and rates or as a basis for the distribution of  
19      statutory royalty payments, as the case may be;  
20      and

21           “(ii) the Copyright Royalty Judges may  
22      decline to adopt the agreement as the basis for  
23      statutory terms and rates or as the basis for  
24      the distribution of statutory royalty payments,  
25      as the case may be, if any other participant de-

1           scribed in subparagraph (A) objects to the  
2           agreement and the Copyright Royalty Judges  
3           find, based on the record before them, that the  
4           agreement is not likely to meet the statutory  
5           standard for setting the terms and rates, or for  
6           distributing the royalty payments, as the case  
7           may be.

8           “(B) License agreements voluntarily negotiated  
9           pursuant to section 112(c)(5), 114(f)(3),  
10          115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not re-  
11          sult in statutory terms and rates shall not be subject  
12          to clauses (i) and (ii) of subparagraph (A).

13          “(c) RULINGS.—The Copyright Royalty Judges may  
14          make any necessary procedural or evidentiary rulings in  
15          any proceeding under this chapter and may, before com-  
16          mencing a proceeding under this chapter, make any such  
17          rulings that would apply to the proceedings conducted by  
18          the Copyright Royalty Judges. The Copyright Royalty  
19          Judges may consult with the Register of Copyrights in  
20          making any rulings under section 802(f)(1).

21          “(d) ADMINISTRATIVE SUPPORT.—The Librarian of  
22          Congress shall provide the Copyright Royalty Judges with  
23          the necessary administrative services related to pro-  
24          ceedings under this chapter.

1       “(e) ~~LOCATION IN LIBRARY OF CONGRESS.~~—The of-  
 2       fices of the Copyright Royalty Judges and staff shall be  
 3       in the Library of Congress.

4       **“§ 802. Copyright Royalty Judgeships; staff**

5       “(a) ~~QUALIFICATIONS OF COPYRIGHT ROYALTY~~  
 6       JUDGES.—Each Copyright Royalty Judge shall be an at-  
 7       torney who has at least 7 years of legal experience. The  
 8       Chief Copyright Royalty Judge shall have at least 5 years  
 9       of experience in adjudications, arbitrations, or court trials.  
 10      Of the other two Copyright Royalty Judges, one shall have  
 11      significant knowledge of copyright law, and the other shall  
 12      have significant knowledge of economics. An individual  
 13      may serve as a Copyright Royalty Judge only if the indi-  
 14      vidual is free of any financial conflict of interest under  
 15      subsection (h). In this subsection, ‘adjudication’ has the  
 16      meaning given that term in section 551 of title 5, but does  
 17      not include mediation.

18      “(b) ~~STAFF.~~—The Chief Copyright Royalty Judge  
 19      shall hire 3 full-time staff members to assist the Copyright  
 20      Royalty Judges in performing their functions.

21      “(c) ~~TERMS.~~—The terms of the Copyright Royalty  
 22      Judges shall each be 6 years, except of the individuals first  
 23      appointed, the Chief Copyright Royalty Judge shall be ap-  
 24      pointed to a term of 6 years, and of the remaining Copy-  
 25      right Royalty Judges, one shall be appointed to a term

1 of 2 years, and the other shall be appointed to a term  
 2 of 4 years. An individual serving as a Copyright Royalty  
 3 Judge may be reappointed to subsequent terms. The term  
 4 of a Copyright Royalty Judge shall begin when the term  
 5 of the predecessor of that Copyright Royalty Judge ends.  
 6 When the term of office of a Copyright Royalty Judge  
 7 ends, the individual serving that term may continue to  
 8 serve until a successor is selected.

9 “(d) VACANCIES OR INCAPACITY.—

10 “(1) VACANCIES.—If a vacancy should occur in  
 11 the position of Copyright Royalty Judge, the Librar-  
 12 ian of Congress shall act expeditiously to fill the va-  
 13 cancy, and may appoint an interim Copyright Roy-  
 14 alty Judge to serve until another Copyright Royalty  
 15 Judge is appointed under this section. An individual  
 16 appointed to fill the vacancy occurring before the ex-  
 17 piration of the term for which the predecessor of  
 18 that individual was appointed shall be appointed for  
 19 the remainder of that term.

20 “(2) INCAPACITY.—In the case in which a  
 21 Copyright Royalty Judge is temporarily unable to  
 22 perform his or her duties, the Librarian of Congress  
 23 may appoint an interim Copyright Royalty Judge to  
 24 perform such duties during the period of such inca-  
 25 pacity.

1       “(e) COMPENSATION.—

2               “(1) JUDGES.—The Chief Copyright Royalty  
3       Judge shall receive compensation at the rate of basic  
4       pay payable for level ~~AL-1~~ for administrative law  
5       judges pursuant to section ~~5372(b)~~ of title 5, and  
6       each of the other two Copyright Royalty Judges  
7       shall receive compensation at the rate of basic pay  
8       payable for level ~~AL-2~~ for administrative law judges  
9       pursuant to such section. The compensation of the  
10      Copyright Royalty Judges shall not be subject to  
11      any regulations adopted by the Office of Personnel  
12      Management pursuant to its authority under section  
13      ~~5376(b)(1)~~ of title 5.

14              “(2) STAFF MEMBERS.—Of the staff members  
15      appointed under subsection (b)—

16                      “(A) the rate of pay of one staff member  
17                      shall be not more than the basic rate of pay  
18                      payable for ~~GS-15~~ of the General Schedule;

19                      “(B) the rate of pay of one staff member  
20                      shall be not less than the basic rate of pay pay-  
21                      able for ~~GS-13~~ of the General Schedule and not  
22                      more than the basic rate of pay payable for  
23                      ~~GS-14~~ of such Schedule; and

24                      “(C) the rate of pay for the third staff  
25                      member shall be not less than the basic rate of

1 pay payable for GS-8 of the General Schedule  
 2 and not more than the basic rate of pay payable  
 3 for GS-11 of such Schedule.

4 “(f) INDEPENDENCE OF COPYRIGHT ROYALTY  
 5 JUDGE.—

6 “(1) IN MAKING DETERMINATIONS.—

7 “(A) IN GENERAL.—Subject to subpara-  
 8 graph (B), the Copyright Royalty Judges shall  
 9 have full independence in making determina-  
 10 tions concerning adjustments and determina-  
 11 tions of copyright royalty rates and terms, the  
 12 distribution of copyright royalties, the accept-  
 13 ance or rejection of royalty claims, rate adjust-  
 14 ment petitions, and petitions to participate, and  
 15 in issuing other rulings under this title, except  
 16 that the Copyright Royalty Judges may consult  
 17 with the Register of Copyrights on any matter  
 18 other than a question of fact. Any such con-  
 19 sultations between the Copyright Royalty  
 20 Judges and the Register of Copyright on any  
 21 question of law shall be in writing or on the  
 22 record.

23 “(B) NOVEL QUESTIONS.—(i) Notwith-  
 24 standing the provisions of subparagraph (A), in  
 25 any case in which the Copyright Royalty Judges

1 in a proceeding under this title are presented  
2 with a novel question of law concerning an in-  
3 terpretation of those provisions of this title that  
4 are the subject of the proceeding; the Copyright  
5 Royalty Judges shall request the Register of  
6 Copyrights, in writing, to submit a written  
7 opinion on the resolution of such novel question.  
8 The Register shall submit and make public that  
9 opinion within such time period as the Copy-  
10 right Royalty Judges may prescribe. Any con-  
11 sultations under this subparagraph between the  
12 Copyright Royalty Judges and the Register of  
13 Copyrights shall be in writing or on the record.  
14 The opinion of the Register shall not be binding  
15 on the Copyright Royalty Judges, but the Copy-  
16 right Royalty Judges shall take the opinion of  
17 the Register into account in making the judges'  
18 determination on the question concerned.

19 “(ii) In clause (i), a ‘novel question of law’  
20 is a question of law that has not been deter-  
21 mined in prior decisions, determinations, and  
22 rulings described in section 803(a).

23 “(2) PERFORMANCE APPRAISALS.—

24 “(A) IN GENERAL.—Notwithstanding any  
25 other provision of law or any regulation of the

1 Library of Congress, and subject to subpara-  
2 graph (B), the Copyright Royalty Judges shall  
3 not receive performance appraisals.

4 “(B) RELATING TO SANCTION OR RE-  
5 MOVAL.—To the extent that the Librarian of  
6 Congress adopts regulations under subsection  
7 (h) relating to the sanction or removal of a  
8 Copyright Royalty Judge and such regulations  
9 require documentation to establish the cause of  
10 such sanction or removal, the Copyright Roy-  
11 alty Judge may receive an appraisal related  
12 specifically to the cause of the sanction or re-  
13 moval.

14 “(g) INCONSISTENT DUTIES BARRED.—No Copy-  
15 right Royalty Judge may undertake duties inconsistent  
16 with his or her duties and responsibilities as Copyright  
17 Royalty Judge.

18 “(h) STANDARDS OF CONDUCT.—The Librarian of  
19 Congress shall adopt regulations regarding the standards  
20 of conduct, including financial conflict of interest and re-  
21 strictions against ex parte communications, which shall  
22 govern the Copyright Royalty Judges and the proceedings  
23 under this chapter.

24 “(i) REMOVAL OR SANCTION.—The Librarian of Con-  
25 gress may sanction or remove a Copyright Royalty Judge



1 for violation of the standards of conduct adopted under  
 2 subsection (h), misconduct, neglect of duty, or any dis-  
 3 qualifying physical or mental disability. Any such sanction  
 4 or removal may be made only after notice and opportunity  
 5 for a hearing, but the Librarian of Congress may suspend  
 6 the Copyright Royalty Judge during the pendency of such  
 7 hearing. The Librarian shall appoint an interim Copyright  
 8 Royalty Judge during the period of any such suspension.

9 **“§ 803. Proceedings of Copyright Royalty Judges**

10 “(a) PROCEEDINGS.—

11 “(1) IN GENERAL.—The Copyright Royalty  
 12 Judges shall act in accordance with this title, and to  
 13 the extent not inconsistent with this title, in accord-  
 14 ance with subchapter II of chapter 5 of title 5, in  
 15 carrying out the purposes set forth in section 801.  
 16 The Copyright Royalty Judges shall act in accord-  
 17 ance with regulations issued by the Copyright Roy-  
 18 alty Judges and on the basis of a fully documented  
 19 written record, prior decisions of the Copyright Roy-  
 20 alty Tribunal, prior copyright arbitration royalty  
 21 panel determinations, rulings by the Librarian of  
 22 Congress before the effective date of the Copyright  
 23 Royalty and Distribution Reform Act of 2004, prior  
 24 determinations of Copyright Royalty Judges under  
 25 this chapter, and decisions of the court in appeals

under this chapter before, on, or after such effective date. Any participant in a proceeding under subsection (b)(2) may submit relevant information and proposals to the Copyright Royalty Judges.

~~“(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—~~The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

~~“(3) DETERMINATIONS.—~~Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

~~“(b) PROCEDURES.—~~

~~“(1) INITIATION.—~~

~~“(A) CALL FOR PETITIONS TO PARTICIPATE.—~~(i) Promptly upon the filing of a petition for a rate adjustment or determination

1 under section 804(a) or 804(b)(8), or by no  
2 later than January 5 of a year specified in sec-  
3 tion 804 for the commencement of a proceeding  
4 if a petition has not been filed by that date, the  
5 Copyright Royalty Judges shall cause to be  
6 published in the Federal Register notice of com-  
7 mencement of proceedings under this chapter  
8 calling for the filing of petitions to participate  
9 in a proceeding under this chapter for the pur-  
10 pose of making the relevant determination  
11 under section 111, 112, 114, 115, 116, 118,  
12 119, 1004 or 1007, as the case may be.

13 “(ii) Petitions to participate shall be filed  
14 by no later than 30 days after publication of  
15 notice of commencement of a proceeding, under  
16 clause (i), except that the Copyright Royalty  
17 Judges may, for substantial good cause shown  
18 and if there is no prejudice to the participants  
19 that have already filed petitions, accept late pe-  
20 titions to participate at any time up to the date  
21 that is 90 days before the date on which par-  
22 ticipants in the proceeding are to file their writ-  
23 ten direct statements.

24 “(B) PETITIONS TO PARTICIPATE.—Each  
25 petition to participate in a proceeding shall de-

1           scribe the petitioner’s interest in the subject  
2           matter of the proceeding. Parties with similar  
3           interests may file a single petition to partici-  
4           pate.

5           “(2) PARTICIPATION IN GENERAL.—Subject to  
6           paragraph (4), a person may participate in a pro-  
7           ceeding under this chapter, including through the  
8           submission of briefs or other information, only if—

9               “(A) that person has filed a petition to  
10           participate in accordance with paragraph (1)  
11           (either individually or as a group under para-  
12           graph (1)(B)); together with a filing fee of  
13           \$150;

14               “(B) the Copyright Royalty Judges have  
15           not determined that the petition to participate  
16           is facially invalid; and

17               “(C) the Copyright Royalty Judges have  
18           not determined, sua sponte or on the motion of  
19           another participant in the proceeding, that the  
20           person lacks a significant interest in the pro-  
21           ceeding.

22           “(3) VOLUNTARY NEGOTIATION PERIOD.—

23               “(A) IN GENERAL.—Promptly after the  
24           date for filing of petitions to participate in a  
25           proceeding, the Copyright Royalty Judges shall

1 make available to all participants in the pro-  
 2 ceeding a list of such participants and shall ini-  
 3 tiate a voluntary negotiation period among the  
 4 participants.

5 “(B) LENGTH OF PROCEEDINGS.—The vol-  
 6 untary negotiation period initiated under sub-  
 7 paragraph (A) shall be 3 months.

8 “(C) DETERMINATION OF SUBSEQUENT  
 9 PROCEEDINGS.—At the close of the voluntary  
 10 negotiation proceedings, the Copyright Royalty  
 11 Judges shall, if further proceedings under this  
 12 chapter are necessary, determine whether and  
 13 to what extent paragraphs (4) and (5) will  
 14 apply to the parties.

15 “(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION  
 16 PROCEEDINGS.—

17 “(A) IN GENERAL.—If, in a proceeding  
 18 under this chapter to determine the distribution  
 19 of royalties, a participant in the proceeding as-  
 20 serts that the contested amount of the claim is  
 21 \$10,000 or less, the Copyright Royalty Judges  
 22 shall decide the controversy on the basis of the  
 23 filing in writing of the initial claim, the initial  
 24 response by any opposing participant, and one  
 25 additional response by each such party. The

1 participant asserting the claim shall not be re-  
2 quired to pay the filing fee under paragraph  
3 ~~(2)~~.

4 “~~(B)~~ BAD FAITH INFLATION OF CLAIM.—

5 If the Copyright Royalty Judges determine that  
6 a participant asserts in bad faith an amount in  
7 controversy in excess of \$10,000 for the pur-  
8 pose of avoiding a determination under the pro-  
9 cedure set forth in subparagraph ~~(A)~~, the Copy-  
10 right Royalty Judges shall impose a fine on  
11 that participant in an amount not to exceed the  
12 difference between the actual amount distrib-  
13 uted and the amount asserted by the partici-  
14 pant.

15 “~~(5)~~ PAPER PROCEEDINGS IN RATEMAKING

16 PROCEEDINGS.—The Copyright Royalty Judges in  
17 proceedings under this chapter to determine royalty  
18 rates may decide, sua sponte or upon motion of a  
19 participant, to determine issues on the basis of ini-  
20 tial filings in writing, initial responses by any oppos-  
21 ing participant, and one additional response by each  
22 such participant. Prior to making such decision to  
23 proceed on such a paper record only, the Copyright  
24 Royalty Judges shall offer to all parties to the pro-

ceeding the opportunity to comment on the decision.

The procedure under this paragraph—

“(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

“(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

“(6) REGULATIONS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

“(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the

1 day before the effective date of the Copyright  
2 Royalty and Distribution Reform Act of 2004,  
3 to the extent such regulations are not incon-  
4 sistent with this chapter, except that functions  
5 carried out under such regulations by the Li-  
6 brarian of Congress, the Register of Copyrights,  
7 or copyright arbitration royalty panels that, as  
8 of such date of enactment, are to be carried out  
9 by the Copyright Royalty Judges under this  
10 chapter, shall be carried out by the Copyright  
11 Royalty Judges under such regulations.

12 “(C) REQUIREMENTS.—Regulations issued  
13 under subparagraph (A) shall include the fol-  
14 lowing:

15 “(i) The written direct statements of  
16 all participants in a proceeding under  
17 paragraph (2) shall be filed by a date spec-  
18 ified by the Copyright Royalty Judges,  
19 which may be no earlier than four months,  
20 and no later than five months, after the  
21 end of the voluntary negotiation period  
22 under paragraph (3). Notwithstanding the  
23 preceding sentence, a participant in a pro-  
24 ceeding may, within 15 days after the end  
25 of the discovery period specified in clause



1 (iii), file an amended written direct state-  
2 ment based on new information received  
3 during the discovery process.

4 “(ii)(I) Following the submission to  
5 the Copyright Royalty Judges of written  
6 direct statements by the participants in a  
7 proceeding under paragraph (2), the  
8 judges shall meet with the participants for  
9 the purpose of setting a schedule for con-  
10 ducting and completing discovery. Such  
11 schedule shall be determined by the Copy-  
12 right Royalty Judges.

13 “(II) In this chapter, the term ‘writ-  
14 ten direct statements’ means witness state-  
15 ments, testimony, and exhibits to be pre-  
16 sented in the proceedings, and such other  
17 information that is necessary to establish  
18 terms and rates, or the distribution of roy-  
19 alty payments, as the case may be, as set  
20 forth in regulations issued by the Copy-  
21 right Royalty Judges.

22 “(iii) Hearsay may be admitted in  
23 proceedings under this chapter to the ex-  
24 tent deemed appropriate by the Copyright  
25 Royalty Judges.

1           “(iv) Discovery in such proceedings  
2           shall be permitted for a period of 60 days,  
3           except for discovery ordered by the Copy-  
4           right Royalty Judges in connection with  
5           the resolution of motions, orders and dis-  
6           putes pending at the end of such period.

7           “(v) Any participant under paragraph  
8           (2) in a proceeding under this chapter to  
9           determine royalty rates may, upon written  
10          notice, seek discovery of information and  
11          materials relevant and material to the pro-  
12          ceeding. Any objection to any such dis-  
13          covery request shall be resolved by a mo-  
14          tion or request to compel discovery made  
15          to the Copyright Royalty Judges. Each  
16          motion or request to compel discovery shall  
17          be determined by the Copyright Royalty  
18          Judges, or by a Copyright Royalty Judge  
19          when permitted under subsection (a)(2),  
20          who may approve the request only if the  
21          evidence that would be produced is relevant  
22          and material. A Copyright Royalty Judge  
23          may refuse a request to compel discovery  
24          of evidence that has been found to be rel-  
25          evant and material, only upon good cause

1 shown. For purposes of the preceding sen-  
2 tence, the basis for ‘good cause’ may only  
3 be that—

4 “(I) the discovery sought is un-  
5 reasonably cumulative or duplicative;  
6 or is obtainable from another source  
7 that is more convenient, less burden-  
8 some, or less expensive;

9 “(II) the participant seeking dis-  
10 covery has had ample opportunity by  
11 discovery in the action to obtain the  
12 information sought; or

13 “(III) the burden or expense of  
14 the proposed discovery outweighs its  
15 likely benefit, taking into account the  
16 needs and resources of the partici-  
17 pants, the importance of the issues at  
18 stake, and the importance of the pro-  
19 posed discovery in resolving the  
20 issues.

21 “(vi) The rules in effect on the day  
22 before the effective date of the Copyright  
23 Royalty and Distribution Reform Act of  
24 2004, relating to discovery in proceedings  
25 under this title to determine the distribu-

tion of royalty fees, shall continue to apply to such proceedings on and after such effective date.

“(vii) The Copyright Royalty Judges may issue subpoenas requiring the production of evidence or witnesses, but only if the evidence requested to be produced or that would be proffered by the witness is relevant and material.

“(viii) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period.

“(e) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

“(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(vi), but, in the case of a proceeding to determine successors to rates or terms that expire on

1 a specified date, in no event later than 15 days be-  
 2 fore the expiration of the then current statutory  
 3 rates and terms.

4 ~~“(2) REHEARINGS.—~~

5 ~~“(A) IN GENERAL.—The Copyright Roy-~~  
 6 ~~alty Judges may, in exceptional cases, upon mo-~~  
 7 ~~tion of a participant under subsection (b)(2),~~  
 8 ~~order a rehearing, after the determination in a~~  
 9 ~~proceeding is issued under paragraph (1), on~~  
 10 ~~such matters as the Copyright Royalty Judges~~  
 11 ~~determine to be appropriate.~~

12 ~~“(B) TIMING FOR FILING MOTION.—Any~~  
 13 ~~motion for a rehearing under subparagraph (A)~~  
 14 ~~may only be filed within 15 days after the date~~  
 15 ~~on which the Copyright Royalty Judges deliver~~  
 16 ~~their initial determination concerning rates and~~  
 17 ~~terms to the participants in the proceeding.~~

18 ~~“(C) PARTICIPATION BY OPPOSING PARTY~~  
 19 ~~NOT REQUIRED.—In any case in which a re-~~  
 20 ~~hearing is ordered, any opposing party shall not~~  
 21 ~~be required to participate in the rehearing.~~

22 ~~“(D) NO NEGATIVE INFERENCE.—No neg-~~  
 23 ~~ative inference shall be drawn from lack of par-~~  
 24 ~~ticipation in a rehearing.~~

1           “(E) CONTINUITY OF RATES AND  
 2           TERMS.—(i) If the decision of the Copyright  
 3           Royalty Judges on any motion for a rehearing  
 4           is not rendered before the expiration of the  
 5           statutory rates and terms that were previously  
 6           in effect, in the case of a proceeding to deter-  
 7           mine successors to rates and terms that expire  
 8           on a specified date, then—

9           “(I) the initial determination of the  
 10          Copyright Royalty Judges that is the sub-  
 11          ject of the rehearing motion shall be effec-  
 12          tive as of the day following the date on  
 13          which the rates and terms that were pre-  
 14          viously in effect expire; and

15          “(II) in the case of a proceeding  
 16          under section 114(f)(1)(C) or 114(f)(2)(C),  
 17          royalty rates and terms shall, for purposes  
 18          of section 114(f)(4)(B), be deemed to have  
 19          been set at those rates and terms con-  
 20          tained in the initial determination of the  
 21          Copyright Royalty Judges that is the sub-  
 22          ject of the rehearing motion, as of the date  
 23          of that determination.

24          “(ii) The pendency of a motion for a re-  
 25          hearing under this paragraph shall not relieve

1 persons obligated to make royalty payments  
2 who would be affected by the determination on  
3 that motion from providing the statements of  
4 account and any reports of use, to the extent  
5 required, and paying the royalties required  
6 under the relevant determination or regulations.

7 “(iii) Notwithstanding clause (ii), whenever  
8 royalties described in clause (ii) are paid to a  
9 person other than the Copyright Office, the en-  
10 tity designated by the Copyright Royalty  
11 Judges to which such royalties are paid by the  
12 copyright user (and any successor thereto)  
13 shall, within 60 days after the motion for re-  
14 hearing is resolved or, if the motion is granted,  
15 within 60 days after the rehearing is concluded,  
16 return any excess amounts previously paid to  
17 the extent necessary to comply with the final  
18 determination of royalty rates by the Copyright  
19 Royalty Judges.

20 “(3) CONTENTS OF DETERMINATION.—A deter-  
21 mination of the Copyright Royalty Judges shall be  
22 accompanied by the written record, and shall set  
23 forth the facts that the Copyright Royalty Judges  
24 found relevant to their determination. Among other  
25 terms adopted in a determination, the Copyright

1       Royalty Judges may specify notice and record-  
2       keeping requirements of users of the copyrights at  
3       issue that apply in lieu of those that would otherwise  
4       apply under regulations.

5           “(4) CONTINUING JURISDICTION.—The Copy-  
6       right Royalty Judges may amend the determination  
7       or the regulations issued pursuant to the determina-  
8       tion in order to correct any technical errors in the  
9       determination or to respond to unforeseen cir-  
10      cumstances that preclude the proper effectuation of  
11      the determination.

12          “(5) PROTECTIVE ORDER.—The Copyright Roy-  
13      alty Judges may issue such orders as may be appro-  
14      priate to protect confidential information, including  
15      orders excluding confidential information from the  
16      record of the determination that is published or  
17      made available to the public, except that any terms  
18      or rates of royalty payments or distributions may  
19      not be excluded.

20          “(6) PUBLICATION OF DETERMINATION.—The  
21      Librarian of Congress shall cause the determination,  
22      and any corrections thereto, to be published in the  
23      Federal Register. The Librarian of Congress shall  
24      also publicize the determination and corrections in  
25      such other manner as the Librarian considers appro-



1       prate, including, but not limited to, publication on  
 2       the Internet. The Librarian of Congress shall also  
 3       make the determination, corrections, and the accom-  
 4       panying record available for public inspection and  
 5       copying.

6       ~~“(d) JUDICIAL REVIEW.—~~

7               ~~“(1) APPEAL.—Any determination of the Copy-~~  
 8       right Royalty Judges under subsection (c) may,  
 9       within 30 days after the publication of the deter-  
 10      mination in the Federal Register, be appealed, to the  
 11      United States Court of Appeals for the District of  
 12      Columbia Circuit, by any aggrieved participant in  
 13      the proceeding under subsection (b)(2) who fully  
 14      participated in the proceeding and who would be  
 15      bound by the determination. If no appeal is brought  
 16      within that 30-day period, the determination of the  
 17      Copyright Royalty Judges shall be final, and the  
 18      royalty fee or determination with respect to the dis-  
 19      tribution of fees, as the case may be, shall take ef-  
 20      fect as set forth in paragraph (2).

21      ~~“(2) EFFECT OF RATES.—~~

22               ~~“(A) EXPIRATION ON SPECIFIED DATE.—~~

23      When this title provides that the royalty rates  
 24      and terms that were previously in effect are to  
 25      expire on a specified date, any adjustment or

1 determination by the Copyright Royalty Judges  
2 of successor rates and terms for an ensuing  
3 statutory license period shall be effective as of  
4 the day following the date of expiration of the  
5 rates and terms that were previously in effect,  
6 even if the determination of the Copyright Roy-  
7 alty Judges is rendered on a later date.

8 “(B) OTHER CASES.—In cases where rates  
9 and terms do not expire on a specified date or  
10 have not yet been established, successor or new  
11 rates or terms shall take effect on the first day  
12 of the second month that begins after the publi-  
13 cation of the determination of the Copyright  
14 Royalty Judges in the Federal Register, except  
15 as otherwise provided in this title, and the rates  
16 and terms previously in effect, to the extent ap-  
17 plicable, shall remain in effect until such suc-  
18 cessor rates and terms become effective.

19 “(C) OBLIGATION TO MAKE PAYMENTS.—  
20 (i) The pendency of an appeal under this sub-  
21 section shall not relieve persons obligated to  
22 make royalty payments under section 111, 112,  
23 114, 115, 116, 118, 119, or 1003, who would  
24 be affected by the determination on appeal,  
25 from providing the statements of account (and

1 any report of use, to the extent required) and  
2 paying the royalties required under the relevant  
3 determination or regulations.

4 “(ii) Notwithstanding clause (i), whenever  
5 royalties described in clause (i) are paid to a  
6 person other than the Copyright Office, the en-  
7 tity designated by the Copyright Royalty  
8 Judges to which such royalties are paid by the  
9 copyright user (and any successor thereto)  
10 shall, within 60 days after the final resolution  
11 of the appeal, return any excess amounts pre-  
12 viously paid (and interest thereon, if ordered  
13 pursuant to paragraph (3)) to the extent nec-  
14 essary to comply with the final determination of  
15 royalty rates on appeal.

16 “(3) JURISDICTION OF COURT.—If the court,  
17 pursuant to section 706 of title 5, modifies or va-  
18 cates a determination of the Copyright Royalty  
19 Judges, the court may enter its own determination  
20 with respect to the amount or distribution of royalty  
21 fees and costs, and order the repayment of any ex-  
22 cess fees, the payment of any underpaid fees, and  
23 the payment of interest pertaining respectively there-  
24 to, in accordance with its final judgment. The court  
25 may also vacate the determination of the Copyright

Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

“(c) ADMINISTRATIVE MATTERS.—

“(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

“(A) DEDUCTION FROM FILING FEES.—

The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

“(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs of proceedings under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant

1 to this subparagraph shall remain available  
 2 until expended.

3 ~~“(2) POSITIONS REQUIRED FOR ADMINISTRA-~~  
 4 ~~TION OF COMPULSORY LICENSING.—~~Section 307 of  
 5 the Legislative Branch Appropriations Act, 1994,  
 6 shall not apply to employee positions in the Library  
 7 of Congress that are required to be filled in order  
 8 to carry out section 111, 112, 114, 115, 116, 118,  
 9 or 119 or chapter 10.

10 **“§ 804. Institution of proceedings**

11 ~~“(a) FILING OF PETITION.—~~With respect to pro-  
 12 ceedings referred to in paragraphs (1) and (2) of section  
 13 801(b) concerning the determination or adjustment of roy-  
 14 alty rates as provided in sections 111, 112, 114, 115, 116,  
 15 118, and 1004, during the calendar years specified in the  
 16 schedule set forth in subsection (b), any owner or user  
 17 of a copyrighted work whose royalty rates are specified  
 18 by this title, or are established under this chapter before  
 19 or after the enactment of the Copyright Royalty and Dis-  
 20 tribution Reform Act of 2004, may file a petition with the  
 21 Copyright Royalty Judges declaring that the petitioner re-  
 22 quests a determination or adjustment of the rate. The  
 23 Copyright Royalty Judges shall make a determination as  
 24 to whether the petitioner has such a significant interest  
 25 in the royalty rate in which a determination or adjustment

1 is requested. If the Copyright Royalty Judges determine  
 2 that the petitioner has such a significant interest, the  
 3 Copyright Royalty Judges shall cause notice of this deter-  
 4 mination, with the reasons therefor, to be published in the  
 5 Federal Register, together with the notice of commence-  
 6 ment of proceedings under this chapter. With respect to  
 7 proceedings under paragraph (1) of section 801(b) con-  
 8 cerning the determination or adjustment of royalty rates  
 9 as provided in sections 112 and 114, during the calendar  
 10 years specified in the schedule set forth in subsection (b),  
 11 the Copyright Royalty Judges shall cause notice of com-  
 12 mencement of proceedings under this chapter to be pub-  
 13 lished in the Federal Register as provided in section  
 14 803(b)(1)(A).

15 “(b) TIMING OF PROCEEDINGS.—

16 “(1) SECTION 111 PROCEEDINGS.—(A) A peti-  
 17 tion described in subsection (a) to initiate pro-  
 18 ceedings under section 801(b)(2) concerning the ad-  
 19 justment of royalty rates under section 111 to which  
 20 subparagraph (A) or (D) of section 801(b)(2) ap-  
 21 plies may be filed during the year 2005 and in each  
 22 subsequent fifth calendar year.

23 “(B) In order to initiate proceedings under sec-  
 24 tion 801(b)(2) concerning the adjustment of royalty  
 25 rates under section 111 to which subparagraph (B)

1       or ~~(C)~~ of section 801(b)(2) applies, within 12  
2       months after an event described in either of those  
3       subsections, any owner or user of a copyrighted  
4       work whose royalty rates are specified by section  
5       111, or by a rate established under this chapter be-  
6       fore or after the enactment of the Copyright Royalty  
7       and Distribution Reform Act of 2004, may file a pe-  
8       tition with the Copyright Royalty Judges declaring  
9       that the petitioner requests an adjustment of the  
10      rate. The Copyright Royalty Judges shall then pro-  
11      ceed as set forth in subsection (a) of this section.  
12      Any change in royalty rates made under this chapter  
13      pursuant to this subparagraph may be reconsidered  
14      in the year 2005, and each fifth calendar year there-  
15      after, in accordance with the provisions in section  
16      801(b)(3)(B) or ~~(C)~~, as the case may be. A petition  
17      for adjustment of rates under section 11(d)(1)(B) as  
18      a result of a change in the rules and regulations of  
19      the Federal Communications Commission shall set  
20      forth the change on which the petition is based.

21           ~~“(C) Any adjustment of royalty rates under sec-~~  
22      tion 111 shall take effect as of the first accounting  
23      period commencing after the publication of the de-  
24      termination of the Copyright Royalty Judges in the

1 Federal Register, or on such other date as is speci-  
 2 fied in that determination.

3 ~~“(2) CERTAIN SECTION 112 PROCEEDINGS.—~~

4 Proceedings under this chapter shall be commenced  
 5 in the year 2007 to determine reasonable terms and  
 6 rates of royalty payments for the activities described  
 7 in section 112(e)(1) relating to the limitation on ex-  
 8 clusive rights specified by section 114(d)(1)(C)(iv),  
 9 to become effective on January 1, 2009. Such pro-  
 10 ceedings shall be repeated in each subsequent fifth  
 11 calendar year.

12 ~~“(3) SECTION 114 AND CORRESPONDING 112~~  
 13 ~~PROCEEDINGS.—~~

14 ~~“(A) FOR ELIGIBLE NONSUBSCRIPTION~~  
 15 ~~SERVICES AND NEW SUBSCRIPTION SERVICES.—~~

16 Proceedings under this chapter shall be com-  
 17 menced as soon as practicable after the effective  
 18 date of the Copyright Royalty and Distribution  
 19 Reform Act of 2004 to determine reasonable  
 20 terms and rates of royalty payments under sec-  
 21 tions 114 and 112 for the activities of eligible  
 22 nonsubscription transmission services and new  
 23 subscription services, to be effective for the pe-  
 24 riod beginning on January 1, 2006, and ending  
 25 on December 31, 2010. Such proceedings shall



1 next be commenced in January 2009 to deter-  
2 mine reasonable terms and rates of royalty pay-  
3 ments, to become effective on January 1, 2011.  
4 Thereafter, such proceedings shall be repeated  
5 in each subsequent fifth calendar year.

6 “(B) FOR PREEXISTING SUBSCRIPTION  
7 AND SATELLITE DIGITAL AUDIO RADIO SERV-  
8 ICES.—Proceedings under this chapter shall be  
9 commenced in January 2006 to determine rea-  
10 sonable terms and rates of royalty payments  
11 under sections 114 and 112 for the activities of  
12 preexisting subscription services, to be effective  
13 during the period beginning on January 1,  
14 2008, and ending on December 31, 2012, and  
15 preexisting satellite digital audio radio services,  
16 to be effective during the period beginning on  
17 January 1, 2007, and ending on December 31,  
18 2012. Such proceedings shall next be com-  
19 menced in 2011 to determine reasonable terms  
20 and rates of royalty payments, to become effec-  
21 tive on January 1, 2013. Thereafter, such pro-  
22 ceedings shall be repeated in each subsequent  
23 fifth calendar year.

24 “(C)(i) Notwithstanding any other provi-  
25 sion of this chapter, this subparagraph shall

1        govern proceedings commenced pursuant to sec-  
2        tions 114(f)(1)(C) and 114(f)(2)(C) concerning  
3        new types of services.

4            “(ii) Not later than 30 days after a peti-  
5        tion to determine rates and terms for a new  
6        type of service that is filed by any copyright  
7        owner of sound recordings, or such new type of  
8        service, indicating that such new type of service  
9        is or is about to become operational, the Copy-  
10       right Royalty Judges shall issue a notice for a  
11       proceeding to determine rates and terms for  
12       such service.

13           “(iii) The proceeding shall follow the  
14       schedule set forth in such subsections (b), (c),  
15       and (d) of section 803, except that—

16           “(I) the determination shall be issued  
17       by not later than 24 months after the pub-  
18       lication of the notice under clause (ii); and

19           “(II) the decision shall take effect as  
20       provided in subsections (c)(2) and (d)(2) of  
21       section 803 and section 114(f)(4)(B)(ii)  
22       and (C).

23           “(iv) The rates and terms shall remain in  
24       effect for the period set forth in section

1           ~~114(f)(1)(C) or 114(f)(2)(C), as the case may~~  
 2           ~~be.~~

3           ~~“(4) SECTION 115 PROCEEDINGS.—A petition~~  
 4           ~~described in subsection (a) to initiate proceedings~~  
 5           ~~under section 801(b)(1) concerning the adjustment~~  
 6           ~~or determination of royalty rates as provided in sec-~~  
 7           ~~tion 115 may be filed in the year 2006 and in each~~  
 8           ~~subsequent fifth calendar year, or at such other~~  
 9           ~~times as the parties have agreed under section~~  
 10          ~~115(c)(3)(B) and (C).~~

11          ~~“(5) SECTION 116 PROCEEDINGS.—(A) A peti-~~  
 12          ~~tion described in subsection (a) to initiate pro-~~  
 13          ~~ceedings under section 801(b) concerning the deter-~~  
 14          ~~mination of royalty rates and terms as provided in~~  
 15          ~~section 116 may be filed at any time within 1 year~~  
 16          ~~after negotiated licenses authorized by section 116~~  
 17          ~~are terminated or expire and are not replaced by~~  
 18          ~~subsequent agreements.~~

19          ~~“(B) If a negotiated license authorized by sec-~~  
 20          ~~tion 116 is terminated or expires and is not replaced~~  
 21          ~~by another such license agreement which provides~~  
 22          ~~permission to use a quantity of musical works not~~  
 23          ~~substantially smaller than the quantity of such~~  
 24          ~~works performed on coin-operated phonorecord play-~~  
 25          ~~ers during the 1-year period ending March 1, 1989,~~

1 the Copyright Royalty Judges shall, upon petition  
2 filed under paragraph (1) within 1 year after such  
3 termination or expiration, commence a proceeding to  
4 promptly establish an interim royalty rate or rates  
5 for the public performance by means of a coin-oper-  
6 ated phonorecord player of nondramatic musical  
7 works embodied in phonorecords which had been  
8 subject to the terminated or expired negotiated li-  
9 cense agreement. Such rate or rates shall be the  
10 same as the last such rate or rates and shall remain  
11 in force until the conclusion of proceedings by the  
12 Copyright Royalty Judges, in accordance with sec-  
13 tion 803, to adjust the royalty rates applicable to  
14 such works, or until superseded by a new negotiated  
15 license agreement, as provided in section 116(b).

16 “(6) SECTION 118 PROCEEDINGS.—A petition  
17 described in subsection (a) to initiate proceedings  
18 under section 801(b)(1) concerning the determina-  
19 tion of reasonable terms and rates of royalty pay-  
20 ments as provided in section 118 may be filed in the  
21 year 2006 and in each subsequent fifth calendar  
22 year.

23 “(7) SECTION 1004 PROCEEDINGS.—A petition  
24 described in subsection (a) to initiate proceedings  
25 under section 801(b)(1) concerning the adjustment

1 of reasonable royalty rates under section 1004 may  
 2 be filed as provided in section 1004(a)(3).

3 ~~“(8) PROCEEDINGS CONCERNING DISTRIBUTION~~  
 4 ~~OF ROYALTY FEES.—~~With respect to proceedings  
 5 under section 801(b)(3) concerning the distribution  
 6 of royalty fees in certain circumstances under sec-  
 7 tion 111, 116, 119, or 1007, the Copyright Royalty  
 8 Judges shall, upon a determination that a con-  
 9 troversy exists concerning such distribution, cause to  
 10 be published in the Federal Register notice of com-  
 11 mencement of proceedings under this chapter.

12 **“§ 805. General rule for voluntarily negotiated agree-**  
 13 **ments**

14 ~~“Any rates or terms under this title that—~~

15 ~~“(1) are agreed to by participants to a pro-~~  
 16 ~~ceeding under section 803(b)(2);~~

17 ~~“(2) are adopted by the Copyright Royalty~~  
 18 ~~Judges as part of a determination under this chap-~~  
 19 ~~ter; and~~

20 ~~“(3) are in effect for a period shorter than~~  
 21 ~~would otherwise apply under a determination pursu-~~  
 22 ~~ant to this chapter;~~

23 shall remain in effect for such period of time as would  
 24 otherwise apply under such determination, except that the  
 25 Copyright Royalty Judges shall adjust the rates pursuant

1 to the voluntary negotiations to reflect national monetary  
 2 inflation during the additional period the rates remain in  
 3 effect.”.

4 (b) CONFORMING AMENDMENT.—The table of chap-  
 5 ters for title 17, United States Code, is amended by strik-  
 6 ing the item relating to chapter 8 and inserting the fol-  
 7 lowing:

“8. Proceedings by Copyright Royalty Judges ..... 801”.

8 **SEC. 4. DEFINITION.**

9 Section 101 is amended by inserting after the defini-  
 10 tion of “copies” the following:

11 “A ‘Copyright Royalty Judge’ is a Copyright  
 12 Royalty Judge appointed under section 802 of this  
 13 title, and includes any individual serving as an in-  
 14 terim Copyright Royalty Judge under such section.”.

15 **SEC. 5. TECHNICAL AMENDMENTS.**

16 (a) CABLE RATES.—Section 111(d) is amended—

17 (1) in paragraph (2), in the second sentence, by  
 18 striking “a copyright arbitration royalty panel” and  
 19 inserting “the Copyright Royalty Judges.”; and

20 (2) in paragraph (4)—

21 (A) in subparagraph (A), by striking “Li-  
 22 brarian of Congress” each place it appears and  
 23 inserting “Copyright Royalty Judges”;

24 (B) in subparagraph (B)—

1 (i) in the first sentence, by striking  
 2 “Librarian of Congress shall, upon the rec-  
 3 ommendation of the Register of Copy-  
 4 rights,” and inserting “Copyright Royalty  
 5 Judges shall”;

6 (ii) in the second sentence, by striking  
 7 “Librarian determines” and inserting  
 8 “Copyright Royalty Judges determine”;  
 9 and

10 (iii) in the third sentence—

11 (I) by striking “Librarian” each  
 12 place it appears and inserting “Copy-  
 13 right Royalty Judges”; and

14 (II) by striking “convene a copy-  
 15 right arbitration royalty panel” and  
 16 inserting “conduct a proceeding”; and

17 (C) in subparagraph (C), by striking “Li-  
 18 brarian of Congress” and inserting “Copyright  
 19 Royalty Judges”.

20 (b) EPHEMERAL RECORDINGS.—Section 112(e) is  
 21 amended—

22 (1) in paragraph (3)—

23 (A) by amending the first sentence to read  
 24 as follows: “Voluntary negotiation proceedings  
 25 initiated pursuant to section 804(a) for the pur-

pose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (1) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, or such other period as the parties may agree.”; and

(B) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under paragraphs (2) and (3), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (5), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.”;



1           (B) by striking “copyright arbitration roy-  
2           alty panel” each subsequent place it appears  
3           and inserting “Copyright Royalty Judges”;

4           (C) in the fourth sentence, by striking “its  
5           decision” and inserting “their decision”; and

6           (D) in the last sentence, by striking “Li-  
7           brarian of Congress” and inserting “Copyright  
8           Royalty Judges”;

9           (3) in paragraph (5), by striking “or decision  
10          by the Librarian of Congress” and inserting “, deci-  
11          sion by the Librarian of Congress, or determination  
12          by the Copyright Royalty Judges”;

13          (4) by striking paragraph (6) and redesignating  
14          paragraphs (7), (8), and (9), as paragraphs (6), (7),  
15          and (8), respectively; and

16          (5) in paragraph (6)(A), as so redesignated, by  
17          striking “Librarian of Congress” and inserting  
18          “Copyright Royalty Judges”.

19          (e) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RE-  
20          CORDINGS.—Section 114(f) is amended—

21                 (1) in paragraph (1)—

22                         (A) in subparagraph (A)—

23                                 (i) by amending the first sentence to  
24                                 read as follows: “Voluntary negotiation  
25                                 proceedings initiated pursuant to section

804(a) for the purpose of determining reasonable terms and rates of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services shall cover the 5-year period beginning on January 1 of the year following the second year in which the proceedings are commenced, except where differential transitional periods are provided in section 804(b)(3), or such other period as the parties may agree.”; and

(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound

1            recordings and entities performing sound  
2            recordings affected by this paragraph dur-  
3            ing the 5-year period specified in subpara-  
4            graph (A), or such other date as the par-  
5            ties may agree.”; and

6            (ii) in the second sentence, by striking  
7            “copyright arbitration royalty panel” and  
8            inserting “Copyright Royalty Judges”; and  
9            (C) by amending subparagraph (C) to read

10          as follows:

11          “(C) The procedures under subparagraphs (A)  
12          and (B) also shall be initiated pursuant to a petition  
13          filed by any copyright owners of sound recordings,  
14          any preexisting subscription services, or any pre-  
15          existing satellite digital audio radio services indi-  
16          cating that a new type of subscription digital audio  
17          transmission service on which sound recordings are  
18          performed is or is about to become operational, for  
19          the purpose of determining reasonable terms and  
20          rates of royalty payments with respect to such new  
21          type of transmission service for the period beginning  
22          with the inception of such new type of service and  
23          ending on the date on which the royalty rates and  
24          terms for subscription digital audio transmission  
25          services most recently determined under subpara-

graph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”;

~~(2) in paragraph (2)—~~

~~(A) in subparagraph (A)—~~

(i) by amending the first sentence to read as follows: “Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, except where different transitional periods are provided in section 804(b)(3)(A), or such other period as the parties may agree.”; and

(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

~~(B) in subparagraph (B)—~~

(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the period specified in subparagraph (A), or such other period as the parties may agree.”; and

(ii) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”; and

(C) by amending subparagraph (C) to read as follows:

“(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible

1       nonsubscription service or new subscription service  
 2       on which sound recordings are performed is or is  
 3       about to become operational, for the purpose of de-  
 4       termining reasonable terms and rates of royalty pay-  
 5       ments with respect to such new type of service for  
 6       the period beginning with the inception of such new  
 7       type of service and ending on the date on which the  
 8       royalty rates and terms for preexisting subscription  
 9       digital audio transmission services or preexisting sat-  
 10      ellite digital radio audio services, as the case may be,  
 11      most recently determined under subparagraph (A) or  
 12      (B) and chapter 8 expire, or such other period as  
 13      the parties may agree.”;

14           (3) in paragraph (3), by striking “or decision  
 15      by the Librarian of Congress” and inserting “; deci-  
 16      sion by the Librarian of Congress, or determination  
 17      by the Copyright Royalty Judges”; and

18           (4) in paragraph (4), by striking “Librarian of  
 19      Congress” each place it appears and inserting  
 20      “Copyright Royalty Judges”.

21      (d) ~~PHONORECORDS OF NONDRAMATIC MUSICAL~~  
 22      WORKS.—Section 115(c)(3) is amended—

23           (1) in subparagraph (A)(ii), by striking “(F)”  
 24      and inserting “(E)”;

25           (2) in subparagraph (B)—

1           (A) by striking “under this paragraph”  
2           and inserting “under this section”; and

3           (B) by striking “subparagraphs (B)  
4           through (F)” and inserting “this subparagraph  
5           and subparagraphs (B) through (E)”;  
6           (3) in subparagraph (C)—

7           (A) by amending the first sentence to read  
8           as follows: “Voluntary negotiation proceedings  
9           initiated pursuant to a petition filed under sec-  
10          tion 804(a) for the purpose of determining rea-  
11          sonable terms and rates of royalty payments for  
12          the activities specified by this section shall  
13          cover the period beginning with the effective  
14          date of such terms and rates, but not earlier  
15          than January 1 of the second year following the  
16          year in which the petition is filed, and ending  
17          on the effective date of successor terms and  
18          rates, or such other period as the parties may  
19          agree.”; and

20          (B) in the third sentence, by striking “Li-  
21          brarian of Congress” and inserting “Copyright  
22          Royalty Judges”;  
23          (4) in subparagraph (D)—

24          (A) by amending the first sentence to read  
25          as follows: “In the absence of license agree-

ments negotiated under subparagraphs (B) and (C), the Copyright Royalty Judges shall commence proceedings pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C) or such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.”;

(B) in the third sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(C) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(5) in subparagraph (E)—

(A) in clause (i)—

(i) in the first sentence, by striking “the Librarian of Congress” and inserting “a copyright arbitration royalty panel, the



1 Librarian of Congress, or the Copyright  
2 Royalty Judges”; and

3 (ii) in the second sentence, by striking  
4 “(C), (D) or (F) shall be given effect” and  
5 inserting “(C) or (D) shall be given effect  
6 as to digital phonorecord deliveries”; and

7 (B) in clause (ii)(I), by striking “(C), (D)  
8 or (F)” each place it appears and inserting  
9 “(C) or (D)”; and

10 (6) by striking subparagraph (F) and redesignating  
11 subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

12  
13 (e) COIN-OPERATED PHONORECORD PLAYERS.—Sec-  
14 tion 116 is amended—

15 (1) in subsection (b), by amending paragraph  
16 (2) to read as follows:

17 “(2) CHAPTER 8 PROCEEDING.—Parties not  
18 subject to such a negotiation may have the terms  
19 and rates and the division of fees described in para-  
20 graph (1) determined in a proceeding in accordance  
21 with the provisions of chapter 8.”; and

22 (2) in subsection (c)—

23 (A) in the subsection heading, by striking  
24 “COPYRIGHT ARBITRATION ROYALTY PANEL  
25 DETERMINATIONS” and inserting “DETER-

1 MINATIONS BY COPYRIGHT ROYALTY JUDGES”;  
 2 and

3 (B) by striking “a copyright arbitration  
 4 royalty panel” and inserting “the Copyright  
 5 Royalty Judges”.

6 (f) USE OF CERTAIN WORKS IN CONNECTION WITH  
 7 NONCOMMERCIAL BROADCASTING.—Section 118 is  
 8 amended—

9 (1) in subsection (b)—

10 (A) in paragraph (1)—

11 (i) in the first sentence, by striking  
 12 “Librarian of Congress” and inserting  
 13 “Copyright Royalty Judges”; and

14 (ii) by striking the second and third  
 15 sentences;

16 (B) in paragraph (2), by striking “the Li-  
 17 brarian of Congress:” and all that follows  
 18 through the end of the sentence and inserting  
 19 “a copyright arbitration royalty panel, the Li-  
 20 brarian of Congress, or the Copyright Royalty  
 21 Judge, if copies of such agreements are filed  
 22 with the Copyright Royalty Judges within 30  
 23 days of execution in accordance with regulations  
 24 that the Copyright Royalty Judges shall issue.”;  
 25 and

1                   (C) in paragraph (3)—

2                   (i) in the second sentence—

3                   (I) by striking “copyright arbi-  
4                   tration royalty panel” and inserting  
5                   “Copyright Royalty Judges”; and

6                   (II) by striking “paragraph (2).”  
7                   and inserting “paragraph (2) or (3).”;

8                   (ii) in the last sentence, by striking  
9                   ““Librarian of Congress” and inserting  
10                  “Copyright Royalty Judges”; and

11                  (iii) by striking “(3) In” and all that  
12                  follows through the end of the first sen-  
13                  tence and inserting the following:

14                  “(3) Voluntary negotiation proceedings initiated  
15                  pursuant to a petition filed under section 804(a) for  
16                  the purpose of determining a schedule of terms and  
17                  rates of royalty payments by public broadcasting en-  
18                  tities to copyright owners in works specified by this  
19                  subsection and the proportionate division of fees  
20                  paid among various copyright owners shall cover the  
21                  5-year period beginning on January 1 of the second  
22                  year following the year in which the petition is filed.  
23                  The parties to each negotiation proceeding shall bear  
24                  their own costs.

1           “(4) In the absence of license agreements nego-  
 2           tiated under paragraph (2) or (3), the Copyright  
 3           Royalty Judges shall, pursuant to chapter 8, con-  
 4           duct a proceeding to determine and publish in the  
 5           Federal Register a schedule of rates and terms  
 6           which, subject to paragraph (2), shall be binding on  
 7           all owners of copyright in works specified by this  
 8           subsection and public broadcasting entities, regard-  
 9           less of whether such copyright owners have sub-  
 10          mitted proposals to the Copyright Royalty Judges.”;

11           (2) by striking subsection (e) and redesignating  
 12          subsections (d) through (g) as subsections (e)  
 13          through (f), respectively;

14           (3) in subsection (e), as so redesignated, in the  
 15          matter preceding paragraph (1)—

16                   (A) by striking “(b)(2)” and inserting  
 17                   ““(b)(2) or (3)”;

18                   (B) by striking “(b)(3)” and inserting  
 19                   ““(b)(4)”;

20                   (C) by striking “a copyright arbitration  
 21                   royalty panel” and inserting “the Copyright  
 22                   Royalty Judges”;

23           (4) in subsection (d), as so redesignated—

1           (A) by striking “in the Copyright Office”  
 2           and inserting “with the Copyright Royalty  
 3           Judges”; and

4           (B) by striking “Register of Copyrights”  
 5           and inserting “Copyright Royalty Judges”; and

6           (5) in subsection (f), as so redesignated, by  
 7           striking “(d)” and inserting “(c)”.

8           (g) SECONDARY TRANSMISSIONS BY SATELLITE CAR-  
 9           RIERS.—Section 119(b) is amended—

10           (1) in paragraph (3), by striking “Librarian of  
 11           Congress” and inserting “Copyright Royalty  
 12           Judges”; and

13           (2) in paragraph (4)—

14           (A) in subparagraph (A), by striking “Li-  
 15           brarian of Congress” each place it appears and  
 16           inserting “Copyright Royalty Judges”; and

17           (B) by amending subparagraphs (B) and  
 18           (C) to read as follows:

19           “(B) DETERMINATION OF CONTROVERSY;  
 20           DISTRIBUTIONS.—After the first day of August  
 21           of each year, the Copyright Royalty Judges  
 22           shall determine whether there exists a con-  
 23           troversy concerning the distribution of royalty  
 24           fees. If the Copyright Royalty Judges determine  
 25           that no such controversy exists, the Librarian

of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

~~“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—~~During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, subject to any distributions made under section 801(b)(3).”.

~~(h) DIGITAL AUDIO RECORDING DEVICES.—~~

~~(1) ROYALTY PAYMENTS.—~~Section 1004(a)(3) is amended by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”.

~~(2) ENTITLEMENT TO ROYALTY PAYMENTS.—~~Section 1006(c) is amended by striking “Librarian of Congress shall convene a copyright arbitration

1 royalty panel which” and inserting “Copyright Roy-  
2 alty Judges”.

3 ~~(3) PROCEDURES FOR DISTRIBUTING ROYALTY~~  
4 ~~PAYMENTS.—Section 1007 is amended—~~

5 (A) in subsection (a), by amending para-  
6 graph (1) to read as follows:

7 “(1) FILING OF CLAIMS.—During the first 2  
8 months of each calendar year, every interested copy-  
9 right party seeking to receive royalty payments to  
10 which such party is entitled under section 1006 shall  
11 file with the Copyright Royalty Judges a claim for  
12 payments collected during the preceding year in such  
13 form and manner as the Copyright Royalty Judges  
14 shall prescribe by regulation.”; and

15 (B) by amending subsections (b) and (c) to  
16 read as follows:

17 “(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE  
18 OF A DISPUTE.—After the period established for the filing  
19 of claims under subsection (a), in each year, the Copyright  
20 Royalty Judges shall determine whether there exists a con-  
21 troversy concerning the distribution of royalty payments  
22 under section 1006(c). If the Copyright Royalty Judges  
23 determine that no such controversy exists, the Librarian  
24 of Congress shall, within 30 days after such determina-  
25 tion, authorize the distribution of the royalty payments as

1 set forth in the agreements regarding the distribution of  
 2 royalty payments entered into pursuant to subsection (a).  
 3 The Librarian of Congress shall, before such royalty pay-  
 4 ments are distributed, deduct the reasonable administra-  
 5 tive costs incurred by the Librarian under this section.

6 “(c) RESOLUTION OF DISPUTES.—If the Copyright  
 7 Royalty Judges find the existence of a controversy, the  
 8 Copyright Royalty Judges shall, pursuant to chapter 8 of  
 9 this title, conduct a proceeding to determine the distribu-  
 10 tion of royalty payments. During the pendency of such a  
 11 proceeding, the Copyright Royalty Judges shall withhold  
 12 from distribution an amount sufficient to satisfy all claims  
 13 with respect to which a controversy exists, but shall, to  
 14 the extent feasible, authorize the distribution of any  
 15 amounts that are not in controversy. The Librarian of  
 16 Congress shall, before such royalty payments are distrib-  
 17 uted, deduct the reasonable administrative costs incurred  
 18 by the Librarian under this section.”.

19 (4) DETERMINATION OF CERTAIN DISPUTES.—

20 (A) Section 1010 is amended to read as follows:

21 “§ 1010. Determination of certain disputes

22 “(a) SCOPE OF DETERMINATION.—Before the date  
 23 of first distribution in the United States of a digital audio  
 24 recording device or a digital audio interface device, any  
 25 party manufacturing, importing, or distributing such de-



1 vice, and any interested copyright party may mutually  
2 agree to petition the Copyright Royalty Judges to deter-  
3 mine whether such device is subject to section 1002, or  
4 the basis on which royalty payments for such device are  
5 to be made under section 1003.

6 “(b) INITIATION OF PROCEEDINGS.—The parties  
7 under subsection (a) shall file the petition with the Copy-  
8 right Royalty Judges requesting the commencement of a  
9 proceeding. Within 2 weeks after receiving such a petition,  
10 the Chief Copyright Royalty Judge shall cause notice to  
11 be published in the Federal Register of the initiation of  
12 the proceeding.

13 “(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil  
14 action brought under section 1009 against a party to a  
15 proceeding under this section shall, on application of one  
16 of the parties to the proceeding, be stayed until completion  
17 of the proceeding.

18 “(d) PROCEEDING.—The Copyright Royalty Judges  
19 shall conduct a proceeding with respect to the matter con-  
20 cerned, in accordance with such procedures as the Copy-  
21 right Royalty Judges may adopt. The Copyright Royalty  
22 Judges shall act on the basis of a fully documented written  
23 record. Any party to the proceeding may submit relevant  
24 information and proposals to the Copyright Royalty

1 Judges. The parties to the proceeding shall each bear their  
 2 respective costs of participation.

3 “(e) ~~JUDICIAL REVIEW.~~—Any determination of the  
 4 Copyright Royalty Judges under subsection (d) may be  
 5 appealed, by a party to the proceeding, in accordance with  
 6 section 803(d) of this title. The pendency of an appeal  
 7 under this subsection shall not stay the determination of  
 8 the Copyright Royalty Judges. If the court modifies the  
 9 determination of the Copyright Royalty Judges, the court  
 10 shall have jurisdiction to enter its own decision in accord-  
 11 ance with its final judgment. The court may further vacate  
 12 the determination of the Copyright Royalty Judges and  
 13 remand the case for proceedings as provided in this sec-  
 14 tion.”.

15 (B) The item relating to section 1010 in the  
 16 table of sections for chapter 10 is amended to read  
 17 as follows:

“1010. Determination of certain disputes.”.

18 **SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.**

19 (a) ~~EFFECTIVE DATE.~~—This Act and the amend-  
 20 ments made by this Act shall take effect 6 months after  
 21 the date of the enactment of this Act, except that the Li-  
 22 brarian of Congress shall appoint interim Copyright Roy-  
 23 alty Judges under section 802(d) of title 17, United States  
 24 Code, as amended by this Act, within 90 days after such  
 25 date of enactment to carry out the functions of the Copy-

1 right Royalty Judges under title 17, United States Code,  
2 to the extent that Copyright Royalty Judges provided for  
3 in section 801(a) of title 17, United States Code, as  
4 amended by this Act, have not been appointed before the  
5 end of that 90-day period.

6 (b) TRANSITION PROVISIONS.—

7 (1) IN GENERAL.—Subject to paragraph (2),  
8 the amendments made by this Act shall not affect  
9 any proceedings commenced, petitions filed, or vol-  
10 untary agreements entered into before the enact-  
11 ment of this Act under the provisions of title 17,  
12 United States Code, amended by this Act, and pend-  
13 ing on such date of enactment. Such proceedings  
14 shall continue, determinations made in such pro-  
15 ceedings, and appeals taken therefrom, as if this Act  
16 had not been enacted, and shall continue in effect  
17 until modified under title 17, United States Code, as  
18 amended by this Act. Such petitions filed and vol-  
19 untary agreements entered into shall remain in ef-  
20 fect as if this Act had not been enacted.

21 (2) EFFECTIVE PERIODS FOR CERTAIN RATE-  
22 MAKING PROCEEDINGS.—Notwithstanding paragraph  
23 (1), terms and rates in effect under section  
24 114(f)(2) or 112(e) of title 17, United States Code,  
25 for new subscription services, eligible nonsubscrip-

1       tion services, and services exempt under section  
 2       114(d)(1)(C)(iv) of such title for the period 2003  
 3       through 2004, and any rates published in the Fed-  
 4       eral Register under the authority of the Small  
 5       Webeaster Settlement Act of 2002 for the years  
 6       2003 through 2004, shall be effective until the first  
 7       applicable effective date for successor terms and  
 8       rates specified in section 804(b)(2) or (3)(A) of title  
 9       17, United States Code, or until such later date as  
 10      the parties may agree. Any proceeding commenced  
 11      before the enactment of this Act pursuant to section  
 12      114(f)(2) and chapter 8 of title 17, United States  
 13      Code, to adjust or determine such rates and terms  
 14      for periods following 2004 shall be terminated upon  
 15      the enactment of this Act and shall be null and void.

16      (c) **EXISTING APPROPRIATIONS.**—Any funds made  
 17      available in an appropriations Act before the date of the  
 18      enactment of this Act to carry out chapter 8 of title 17,  
 19      United States Code, shall be available to the extent nec-  
 20      essary to carry out this section.

21      **SECTION 1. SHORT TITLE.**

22           *This Act may be cited as the “Copyright Royalty and*  
 23      *Distribution Reform Act of 2004”.*

1 **SEC. 2. REFERENCE.**

2 *Except as otherwise expressly provided, whenever in*  
 3 *this Act an amendment or repeal is expressed in terms of*  
 4 *an amendment to, or repeal of, a section or other provision,*  
 5 *the reference shall be considered to be made to a section or*  
 6 *other provision of title 17, United States Code.*

7 **SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.**

8 *(a) IN GENERAL.—Chapter 8 is amended to read as*  
 9 *follows:*

10 **“CHAPTER 8—PROCEEDINGS BY**  
 11 **COPYRIGHT ROYALTY JUDGES**

*“Sec.*

*“801. Copyright Royalty Judges; appointment and functions.*

*“802. Copyright Royalty Judgeships; staff.*

*“803. Proceedings of Copyright Royalty Judges.*

*“804. Institution of proceedings.*

*“805. General rule for voluntarily negotiated agreements.*

12 **“§ 801. Copyright Royalty Judges; appointment and**  
 13 **functions**

14 *“(a) APPOINTMENT.—Upon the recommendation of the*  
 15 *Register of Copyrights, the Librarian of Congress shall ap-*  
 16 *point 3 full-time Copyright Royalty Judges, and shall ap-*  
 17 *point 1 of the 3 as the Chief Copyright Royalty Judge.*

18 *“(b) FUNCTIONS.—Subject to the provisions of this*  
 19 *chapter, the functions of the Copyright Royalty Judges shall*  
 20 *be as follows:*

21 *“(1) To make determinations and adjustments of*  
 22 *reasonable terms and rates of royalty payments as*

1       *provided in sections 112(e), 114, 115, 116, 118, 119*  
2       *and 1004. The rates applicable under sections*  
3       *114(f)(1)(B), 115, and 116 shall be calculated to*  
4       *achieve the following objectives:*

5               “(A) *To maximize the availability of cre-*  
6               *ative works to the public.*

7               “(B) *To afford the copyright owner a fair*  
8               *return for his or her creative work and the copy-*  
9               *right user a fair income under existing economic*  
10              *conditions.*

11              “(C) *To reflect the relative roles of the copy-*  
12              *right owner and the copyright user in the prod-*  
13              *uct made available to the public with respect to*  
14              *relative creative contribution, technological con-*  
15              *tribution, capital investment, cost, risk, and con-*  
16              *tribution to the opening of new markets for cre-*  
17              *ative expression and media for their communica-*  
18              *tion.*

19              “(D) *To minimize any disruptive impact*  
20              *on the structure of the industries involved and on*  
21              *generally prevailing industry practices.*

22              “(2) *To make determinations concerning the ad-*  
23              *justment of the copyright royalty rates under section*  
24              *111 solely in accordance with the following provi-*  
25              *sions:*

1           “(A) The rates established by section  
2       111(d)(1)(B) may be adjusted to reflect—

3           “(i) national monetary inflation or de-  
4       flation; or

5           “(ii) changes in the average rates  
6       charged cable subscribers for the basic serv-  
7       ice of providing secondary transmissions to  
8       maintain the real constant dollar level of  
9       the royalty fee per subscriber which existed  
10      as of the date of October 19, 1976,

11      except that—

12           “(I) if the average rates charged cable  
13      system subscribers for the basic service of  
14      providing secondary transmissions are  
15      changed so that the average rates exceed na-  
16      tional monetary inflation, no change in the  
17      rates established by section 111(d)(1)(B)  
18      shall be permitted; and

19           “(II) no increase in the royalty fee  
20      shall be permitted based on any reduction  
21      in the average number of distant signal  
22      equivalents per subscriber.

23      The Copyright Royalty Judges may consider all  
24      factors relating to the maintenance of such level  
25      of payments, including, as an extenuating factor,

1       *whether the industry has been restrained by sub-*  
2       *scriber rate regulating authorities from increas-*  
3       *ing the rates for the basic service of providing*  
4       *secondary transmissions.*

5               *“(B) In the event that the rules and regula-*  
6       *tions of the Federal Communications Commis-*  
7       *sion are amended at any time after April 8,*  
8       *1976, to permit the carriage by cable systems of*  
9       *additional television broadcast signals beyond*  
10       *the local service area of the primary transmitters*  
11       *of such signals, the royalty rates established by*  
12       *section 111(d)(1)(B) may be adjusted to insure*  
13       *that the rates for the additional distant signal*  
14       *equivalents resulting from such carriage are rea-*  
15       *sonable in the light of the changes effected by the*  
16       *amendment to such rules and regulations. In de-*  
17       *termining the reasonableness of rates proposed*  
18       *following an amendment of Federal Communica-*  
19       *tions Commission rules and regulations, the*  
20       *Copyright Royalty Judges shall consider, among*  
21       *other factors, the economic impact on copyright*  
22       *owners and users; except that no adjustment in*  
23       *royalty rates shall be made under this subpara-*  
24       *graph with respect to any distant signal equiva-*  
25       *lent or fraction thereof represented by—*



1           “(i) carriage of any signal permitted  
2           under the rules and regulations of the Fed-  
3           eral Communications Commission in effect  
4           on April 15, 1976, or the carriage of a sig-  
5           nal of the same type (that is, independent,  
6           network, or noncommercial educational)  
7           substituted for such permitted signal; or

8           “(ii) a television broadcast signal first  
9           carried after April 15, 1976, pursuant to an  
10          individual waiver of the rules and regula-  
11          tions of the Federal Communications Com-  
12          mission, as such rules and regulations were  
13          in effect on April 15, 1976.

14          “(C) In the event of any change in the rules  
15          and regulations of the Federal Communications  
16          Commission with respect to syndicated and  
17          sports program exclusivity after April 15, 1976,  
18          the rates established by section 111(d)(1)(B) may  
19          be adjusted to assure that such rates are reason-  
20          able in light of the changes to such rules and reg-  
21          ulations, but any such adjustment shall apply  
22          only to the affected television broadcast signals  
23          carried on those systems affected by the change.

24          “(D) The gross receipts limitations estab-  
25          lished by section 111(d)(1)(C) and (D) shall be

1       *adjusted to reflect national monetary inflation or*  
2       *deflation or changes in the average rates charged*  
3       *cable system subscribers for the basic service of*  
4       *providing secondary transmissions to maintain*  
5       *the real constant dollar value of the exemption*  
6       *provided by such section, and the royalty rate*  
7       *specified therein shall not be subject to adjust-*  
8       *ment.*

9       “(3)(A) *To authorize the distribution, under sec-*  
10      *tions 111, 119, and 1007, of those royalty fees col-*  
11      *lected under sections 111, 119, and 1005, as the case*  
12      *may be, to the extent that the Copyright Royalty*  
13      *Judges have found that the distribution of such fees*  
14      *is not subject to controversy.*

15      “(B) *In cases where the Copyright Royalty*  
16      *Judges determine that controversy exists, the Copy-*  
17      *right Royalty Judges shall determine the distribution*  
18      *of such fees, including partial distributions, in ac-*  
19      *cordance with section 111, 119, or 1007, as the case*  
20      *may be.*

21      “(C) *The Copyright Royalty Judges may make a*  
22      *partial distribution of such fees during the pendency*  
23      *of the proceeding under subparagraph (B) if all par-*  
24      *ticipants under section 803(b)(2) in the proceeding*

1       *that are entitled to receive those fees that are to be*  
2       *partially distributed—*

3               “(i) agree to such partial distribution;

4               “(ii) sign an agreement obligating them to  
5       *return any excess amounts to the extent nec-*  
6       *essary to comply with the final determination on*  
7       *the distribution of the fees made under subpara-*  
8       *graph (B);*

9               “(iii) file the agreement with the Copyright  
10       *Royalty Judges; and*

11              “(iv) agree that such funds are available for  
12       *distribution.*

13              “(D) *The Copyright Royalty Judges and any*  
14       *other officer or employee acting in good faith in dis-*  
15       *tributing funds under subparagraph (C) shall not be*  
16       *held liable for the payment of any excess fees under*  
17       *subparagraph (C). The Copyright Royalty Judges*  
18       *shall, at the time the final determination is made,*  
19       *calculate any such excess amounts.*

20              “(4) *To accept or reject royalty claims filed*  
21       *under sections 111, 119, and 1007, on the basis of*  
22       *timeliness or the failure to establish the basis for a*  
23       *claim.*

1           “(5) To accept or reject rate adjustment petitions  
2           as provided in section 804 and petitions to partici-  
3           pate as provided in section 803(b) (1) and (2).

4           “(6) To determine the status of a digital audio  
5           recording device or a digital audio interface device  
6           under sections 1002 and 1003, as provided in section  
7           1010.

8           “(7)(A) To adopt as a basis for statutory terms  
9           and rates or as a basis for the distribution of statu-  
10          tory royalty payments, an agreement concerning such  
11          matters reached among some or all of the participants  
12          in a proceeding at any time during the proceeding,  
13          except that—

14               “(i) the Copyright Royalty Judges shall  
15               provide to those that would be bound by the  
16               terms, rates, distribution, or other determination  
17               set by the agreement an opportunity to comment  
18               on the agreement and shall provide to the other  
19               participants in the proceeding under section  
20               803(b)(2) that would be bound by the terms,  
21               rates, distribution, or other determination set by  
22               the agreement an opportunity to comment on the  
23               agreement and object to its adoption as a basis  
24               for statutory terms and rates or as a basis for

1       *the distribution of statutory royalty payments,*  
2       *as the case may be; and*

3               “(ii) the Copyright Royalty Judges may de-  
4       cline to adopt the agreement as a basis for statu-  
5       tory terms and rates or as a basis for the dis-  
6       tribution of statutory royalty payments, as the  
7       case may be, if any other participant described  
8       in subparagraph (A) objects to the agreement  
9       and the Copyright Royalty Judges conclude,  
10      based on the record before them if one exists, that  
11      the agreement does not provide a reasonable  
12      basis for setting statutory terms or rates, or for  
13      distributing the royalty payments, as the case  
14      may be.

15              “(B) License agreements voluntarily negotiated  
16      pursuant to section 112(e)(5), 114(f)(3),  
17      115(c)(3)(E)(i), 116(c), or 118(b) (2) or (3) that do  
18      not result in statutory terms and rates shall not be  
19      subject to clauses (i) and (ii) of subparagraph (A).

20              “(C) Interested parties may negotiate and agree  
21      to, and the Copyright Royalty Judges may adopt, an  
22      agreement that specifies as terms notice and record-  
23      keeping requirements that apply in lieu of those that  
24      would otherwise apply under regulations.

1           “(8) *To perform other duties, as assigned by the*  
 2           *Register of Copyrights within the Library of Con-*  
 3           *gress, except as provided in section 802(g) at times*  
 4           *when Copyright Royalty Judges are not engaged in*  
 5           *performing the other duties set forth in this section.*

6           “(c) *RULINGS.—As provided in section 802(f)(1), the*  
 7           *Copyright Royalty Judges may make any necessary proce-*  
 8           *dural or evidentiary rulings in any proceeding under this*  
 9           *chapter and may, before commencing a proceeding under*  
 10          *this chapter, make any such rulings that would apply to*  
 11          *the proceedings conducted by the Copyright Royalty Judges.*

12          “(d) *ADMINISTRATIVE SUPPORT.—The Librarian of*  
 13          *Congress shall provide the Copyright Royalty Judges with*  
 14          *the necessary administrative services related to proceedings*  
 15          *under this chapter.*

16          “(e) *LOCATION IN LIBRARY OF CONGRESS.—The offices*  
 17          *of the Copyright Royalty Judges and staff shall be in the*  
 18          *Library of Congress.*

19          **“§ 802. Copyright Royalty Judgeships; staff**

20          “(a) *QUALIFICATIONS OF COPYRIGHT ROYALTY*  
 21          *JUDGES.—*

22                 “(1) *IN GENERAL.—Each Copyright Royalty*  
 23                 *Judge shall be an attorney who has at least 7 years*  
 24                 *of legal experience. The Chief Copyright Royalty*  
 25                 *Judge shall have at least 5 years of experience in ad-*

1        *judications, arbitrations, or court trials. Of the other*  
2        *two Copyright Royalty Judges, one shall have signifi-*  
3        *cant knowledge of copyright law, and the other shall*  
4        *have significant knowledge of economics. An indi-*  
5        *vidual may serve as a Copyright Royalty Judge only*  
6        *if the individual is free of any financial conflict of*  
7        *interest under subsection (h).*

8                *“(2) DEFINITION.—In this subsection, the term*  
9        *‘adjudication’ has the meaning given that term in*  
10        *section 551 of title 5, but does not include mediation.*

11                *“(b) STAFF.—The Chief Copyright Royalty Judge*  
12        *shall hire 3 full-time staff members to assist the Copyright*  
13        *Royalty Judges in performing their functions.*

14                *“(c) TERMS.—The terms of the Copyright Royalty*  
15        *Judges shall each be 6 years, except of the individuals first*  
16        *appointed, the Chief Copyright Royalty Judge shall be ap-*  
17        *pointed to a term of 6 years, and of the remaining Copy-*  
18        *right Royalty Judges, one shall be appointed to a term of*  
19        *2 years, and the other shall be appointed to a term of 4*  
20        *years. An individual serving as a Copyright Royalty Judge*  
21        *may be reappointed to subsequent terms. The term of a*  
22        *Copyright Royalty Judge shall begin when the term of the*  
23        *predecessor of that Copyright Royalty Judge ends. When the*  
24        *term of office of a Copyright Royalty Judge ends, the indi-*

1 *vidual serving that term may continue to serve until a suc-*  
 2 *cessor is selected.*

3 “(d) *VACANCIES OR INCAPACITY.*—

4 “(1) *VACANCIES.*—*If a vacancy should occur in*  
 5 *the position of Copyright Royalty Judge, the Librar-*  
 6 *ian of Congress shall act expeditiously to fill the va-*  
 7 *cancy, and may appoint an interim Copyright Roy-*  
 8 *alty Judge to serve until another Copyright Royalty*  
 9 *Judge is appointed under this section. An individual*  
 10 *appointed to fill the vacancy occurring before the ex-*  
 11 *piration of the term for which the predecessor of that*  
 12 *individual was appointed shall be appointed for the*  
 13 *remainder of that term.*

14 “(2) *INCAPACITY.*—*In the case in which a Copy-*  
 15 *right Royalty Judge is temporarily unable to perform*  
 16 *his or her duties, the Librarian of Congress may ap-*  
 17 *point an interim Copyright Royalty Judge to perform*  
 18 *such duties during the period of such incapacity.*

19 “(e) *COMPENSATION.*—

20 “(1) *JUDGES.*—*The Chief Copyright Royalty*  
 21 *Judge shall receive compensation at the rate of basic*  
 22 *pay payable for level AL–1 for administrative law*  
 23 *judges pursuant to section 5372(b) of title 5, and each*  
 24 *of the other two Copyright Royalty Judges shall re-*  
 25 *ceive compensation at the rate of basic pay payable*



1     *for level AL-2 for administrative law judges pursuant*  
 2     *to such section. The compensation of the Copyright*  
 3     *Royalty Judges shall not be subject to any regulations*  
 4     *adopted by the Office of Personnel Management pur-*  
 5     *suant to its authority under section 5376(b)(1) of title*  
 6     5.

7             “(2) *STAFF MEMBERS.*—*Of the staff members ap-*  
 8     *pointed under subsection (b)—*

9                 “(A) *the rate of pay of one staff member*  
 10     *shall be not more than the basic rate of pay pay-*  
 11     *able for level 10 of GS-15 of the General Sched-*  
 12     *ule;*

13                “(B) *the rate of pay of one staff member*  
 14     *shall be not less than the basic rate of pay pay-*  
 15     *able for GS-13 of the General Schedule and not*  
 16     *more than the basic rate of pay payable for level*  
 17     *10 of GS-14 of such Schedule; and*

18                “(C) *the rate of pay for the third staff mem-*  
 19     *ber shall be not less than the basic rate of pay*  
 20     *payable for GS-8 of the General Schedule and*  
 21     *not more than the basic rate of pay payable for*  
 22     *level 10 of GS-11 of such Schedule.*

23             “(3) *LOCALITY PAY.*—*All rates of pay referred to*  
 24     *under this subsection shall include locality pay.*

1       “(f) *INDEPENDENCE OF COPYRIGHT ROYALTY*

2 *JUDGE.—*

3       “(1) *IN MAKING DETERMINATIONS.—*

4               “(A) *IN GENERAL.—Subject to subpara-*  
5 *graph (B), the Copyright Royalty Judges shall*  
6 *have full independence in making determinations*  
7 *concerning adjustments and determinations of*  
8 *copyright royalty rates and terms, the distribu-*  
9 *tion of copyright royalties, the acceptance or re-*  
10 *jection of royalty claims, rate adjustment peti-*  
11 *tions, and petitions to participate, and in*  
12 *issuing other rulings under this title, except that*  
13 *the Copyright Royalty Judges may consult with*  
14 *the Register of Copyrights on any matter other*  
15 *than a question of fact. A Copyright Royalty*  
16 *Judge or Judges, or by motion to the Copyright*  
17 *Royalty Judge or Judges, any participant in a*  
18 *proceeding may request a determination of the*  
19 *resolution by the Register of Copyrights on any*  
20 *material question of substantive law (not includ-*  
21 *ing questions of procedure before the Copyright*  
22 *Royalty Judges, the ultimate adjustments and*  
23 *determinations of copyright royalty rates and*  
24 *terms, the ultimate distribution of copyright roy-*  
25 *alties, or the acceptance or rejection of royalty*

1        *claims, rate adjustment petitions, or petitions to*  
2        *participate) concerning an interpretation or con-*  
3        *struction of those provisions of this title that are*  
4        *the subject of the proceeding. Any such motion*  
5        *requesting a written decision by the Register of*  
6        *Copyrights shall be in writing or on the record,*  
7        *and reasonable provision shall be made for com-*  
8        *ment by the participants in the proceeding in*  
9        *such a way as to minimize duplication and*  
10       *delay. Except as provided in subparagraph (B),*  
11       *the Register of Copyrights shall deliver to the*  
12       *Copyright Royalty Judges his or her decision*  
13       *within 14 days of receipt by the Register of*  
14       *Copyrights of all of the briefs or comments of the*  
15       *participants. Such decision shall be in writing*  
16       *and shall be included by the Copyright Royalty*  
17       *Judges in the record that accompanies their final*  
18       *determination. If such a decision is timely deliv-*  
19       *ered to the Register of Copyrights, the Copyright*  
20       *Royalty Judges shall apply the legal determina-*  
21       *tions embodied in the decision of the Register of*  
22       *Copyrights in resolving material questions of*  
23       *substantive law.*

24                *“(B) NOVEL QUESTIONS.—(i) In any case*  
25        *in which a novel question of law concerning an*

1       *interpretation of those provisions of this title*  
2       *that are the subject of the proceeding is pre-*  
3       *sented, the Copyright Royalty Judges shall re-*  
4       *quest a decision of the Register of Copyrights, in*  
5       *writing, to resolve such novel question. To the ex-*  
6       *tent practicable, provision shall be made for*  
7       *comment on such request by the participants in*  
8       *the proceeding, in such a way as to minimize*  
9       *duplication and delay. The Register shall trans-*  
10       *mit his or her decision to the Copyright Royalty*  
11       *Judges within 30 days of receipt by the Register*  
12       *of Copyrights of all of the briefs or comments of*  
13       *the participants. Such decision shall be in writ-*  
14       *ing and included by the Copyright Royalty*  
15       *Judges in the record that accompanies their final*  
16       *determination. If such a decision is timely trans-*  
17       *mitted, the Copyright Royalty Judges shall*  
18       *apply the legal determinations embodied in the*  
19       *decision of the Register of Copyrights in resolv-*  
20       *ing material questions of substantive law.*

21               “(ii) In clause (i), a ‘novel question of law’  
22       *is a question of law that has not been determined*  
23       *in prior decisions, determinations, and rulings*  
24       *described in section 803(a).*

1           “(C) *CONSULTATION.*—*Notwithstanding the*  
2           *provisions of subparagraph (A), the Copyright*  
3           *Royalty Judges shall consult with the Register of*  
4           *Copyrights with respect to any determination or*  
5           *ruling that would require that any act be per-*  
6           *formed by the Copyright Office, and any such de-*  
7           *termination or ruling shall not be binding upon*  
8           *the Register of Copyrights.*

9           “(D) *SUA SPONTE REVIEW OF LEGAL CON-*  
10          *CLUSIONS BY THE REGISTER OF COPYRIGHTS.*—  
11          *The Register of Copyrights may review for legal*  
12          *error the resolution by the Copyright Royalty*  
13          *Judges of a material question of substantive law*  
14          *under this title that underlies or is contained in*  
15          *a final determination of the Copyright Royalty*  
16          *Judges. If the Register of Copyrights concludes,*  
17          *after taking into consideration the views of the*  
18          *participants in the proceeding, that any resolu-*  
19          *tion reached by the Copyright Royalty Judges*  
20          *was in material error, the Register of Copyrights*  
21          *shall issue a written decision correcting such*  
22          *legal error, which shall be made part of the*  
23          *record of the proceeding. Additionally, the Reg-*  
24          *ister of Copyrights shall cause to be published in*  
25          *the Federal Register such written decision to-*

1        *gether with a specific identification of the legal*  
2        *conclusion of the Copyright Royalty Judges that*  
3        *is determined to be erroneous. As to conclusions*  
4        *of substantive law involving an interpretation of*  
5        *the statutory provisions of this title, the decision*  
6        *of the Register of Copyrights shall be binding*  
7        *upon the Copyright Royalty Judges in subse-*  
8        *quent proceedings under this chapter. When a*  
9        *decision has been rendered pursuant to sub-*  
10       *section 802(f)(1)(D), the Register of Copyrights*  
11       *may, on the basis of and in accordance with*  
12       *such decision, intervene as of right in any ap-*  
13       *peal of a final determination of the Copyright*  
14       *Royalty Judges pursuant to section 803(d) in the*  
15       *United States Court of Appeals for the District*  
16       *of Columbia Circuit. If, prior to intervening in*  
17       *such an appeal, the Register of Copyrights gives*  
18       *notification and undertakes to consult with the*  
19       *Attorney General with respect to such interven-*  
20       *tion, and the Attorney General fails within rea-*  
21       *sonable period after receipt of such notification*  
22       *to intervene in such appeal, the Register of*  
23       *Copyrights may intervene in such appeal in his*  
24       *or her own name by any attorney designated by*  
25       *the Register of Copyrights for such purpose.*

1       *Intervention by the Register of Copyrights in his*  
2       *or her own name shall not preclude the Attorney*  
3       *General from intervening on behalf of the United*  
4       *States in such an appeal as may be otherwise*  
5       *provided or required by law.*

6               “(E) *EFFECT ON JUDICIAL REVIEW.*—*Noth-*  
7       *ing in this section shall be interpreted to alter*  
8       *the standard applied by a court in reviewing*  
9       *legal determinations involving an interpretation*  
10       *or construction of the provisions of this title or*  
11       *to affect the extent to which any construction or*  
12       *interpretation of the provisions of this title shall*  
13       *be accorded deference by a reviewing court.*

14               “(2) *PERFORMANCE APPRAISALS.*—

15               “(A) *IN GENERAL.*—*Notwithstanding any*  
16       *other provision of law or any regulation of the*  
17       *Library of Congress, and subject to subpara-*  
18       *graph (B), the Copyright Royalty Judges shall*  
19       *not receive performance appraisals.*

20               “(B) *RELATING TO SANCTION OR RE-*  
21       *MOVAL.*—*To the extent that the Librarian of*  
22       *Congress adopts regulations under subsection (h)*  
23       *relating to the sanction or removal of a Copy-*  
24       *right Royalty Judge and such regulations re-*  
25       *quire documentation to establish the cause of*

1           *such sanction or removal, the Copyright Royalty*  
 2           *Judge may receive an appraisal related specifi-*  
 3           *cally to the cause of the sanction or removal.*

4           “(g) *INCONSISTENT DUTIES BARRED.*—No Copyright  
 5   *Royalty Judge may undertake duties that conflict with his*  
 6   *or her duties and responsibilities as a Copyright Royalty*  
 7   *Judge.*

8           “(h) *STANDARDS OF CONDUCT.*—The Librarian of  
 9   *Congress shall adopt regulations regarding the standards*  
 10   *of conduct, including financial conflict of interest and re-*  
 11   *strictions against ex parte communications, which shall*  
 12   *govern the Copyright Royalty Judges and the proceedings*  
 13   *under this chapter.*

14          “(i) *REMOVAL OR SANCTION.*—The Librarian of Con-  
 15   *gress may sanction or remove a Copyright Royalty Judge*  
 16   *for violation of the standards of conduct adopted under sub-*  
 17   *section (h), misconduct, neglect of duty, or any disquali-*  
 18   *fying physical or mental disability. Any such sanction or*  
 19   *removal may be made only after notice and opportunity*  
 20   *for a hearing, but the Librarian of Congress may suspend*  
 21   *the Copyright Royalty Judge during the pendency of such*  
 22   *hearing. The Librarian shall appoint an interim Copyright*  
 23   *Royalty Judge during the period of any such suspension.*

24   **“§ 803. Proceedings of Copyright Royalty Judges**

25          “(a) *PROCEEDINGS.*—



1           “(1) *IN GENERAL.*—*The Copyright Royalty*  
2           *Judges shall act in accordance with regulations issued*  
3           *by the Copyright Royalty Judges and the Librarian*  
4           *of Congress, and on the basis of a written record,*  
5           *prior determinations of the Copyright Royalty Tri-*  
6           *bunal, Librarian of Congress, copyright arbitration*  
7           *royalty panels, the Register of Copyrights, and the*  
8           *Copyright Royalty Judges (to the extent those deter-*  
9           *minations are not inconsistent with a decision of the*  
10           *Register of Copyrights that was timely delivered pur-*  
11           *suant to subsection 802(f)(1)(D)), under this chapter,*  
12           *and decisions of the court of appeals under this chap-*  
13           *ter before, on, or after the effective date of the Copy-*  
14           *right Royalty and Distribution Reform Act of 2004.*

15           “(2) *JUDGES ACTING AS PANEL AND INDIVID-*  
16           *UALLY.*—*The Copyright Royalty Judges shall preside*  
17           *over hearings in proceedings under this chapter en*  
18           *banc. The Chief Copyright Royalty Judge may des-*  
19           *ignate a Copyright Royalty Judge to preside individ-*  
20           *ually over such collateral and administrative pro-*  
21           *ceedings, and over such proceedings under paragraphs*  
22           *(1) through (5) of subsection (b), as the Chief Judge*  
23           *considers appropriate.*

24           “(3) *DETERMINATIONS.*—*Final determinations*  
25           *of the Copyright Royalty Judges in proceedings under*

1     *this chapter shall be made by majority vote. A Copy-*  
 2     *right Royalty Judge dissenting from the majority on*  
 3     *any determination under this chapter may issue his*  
 4     *or her dissenting opinion, which shall be included*  
 5     *with the determination.*

6     “(b) *PROCEDURES.*—

7         “(1) *INITIATION.*—

8             “(A) *CALL FOR PETITIONS TO PARTICI-*  
 9             *PATE.—(i) Promptly upon the filing of a peti-*  
 10            *tion for a rate adjustment or upon a determina-*  
 11            *tion made under section 804(a) or as provided*  
 12            *under section 804(b)(8), or by no later than Jan-*  
 13            *uary 5 of a year specified in section 804 for the*  
 14            *commencement of a proceeding if a petition has*  
 15            *not been filed by that date, the Copyright Roy-*  
 16            *alty Judges shall cause to be published in the*  
 17            *Federal Register notice of commencement of pro-*  
 18            *ceedings under this chapter calling for the filing*  
 19            *of petitions to participate in a proceeding under*  
 20            *this chapter for the purpose of making the rel-*  
 21            *evant determination under section 111, 112, 114,*  
 22            *115, 116, 118, 119, 1004, or 1007, as the case*  
 23            *may be.*

24            “(ii) *Petitions to participate shall be filed*  
 25            *by no later than 30 days after publication of no-*

1        *tice of commencement of a proceeding, under*  
2        *clause (i), except that the Copyright Royalty*  
3        *Judges may, for substantial good cause shown*  
4        *and if there is no prejudice to the participants*  
5        *that have already filed petitions, accept late peti-*  
6        *tions to participate at any time up to the date*  
7        *that is 90 days before the date on which partici-*  
8        *pants in the proceeding are to file their written*  
9        *direct statements. Notwithstanding the preceding*  
10       *sentence, petitioners whose petitions are filed*  
11       *more than 30 days after publication of notice of*  
12       *commencement of a proceeding are not eligible to*  
13       *object to a settlement reached during the vol-*  
14       *untary negotiation period under section*  
15       *803(b)(3), and any objection filed by such a peti-*  
16       *tioner shall not be taken into account by the*  
17       *Copyright Royalty Judges.*

18        “(B) *PETITIONS TO PARTICIPATE.*—*Each*  
19        *petition to participate in a proceeding shall de-*  
20        *scribe the petitioner’s interest in the subject mat-*  
21        *ter of the proceeding. Parties with similar inter-*  
22        *ests may file a single petition to participate.*

23        “(2) *PARTICIPATION IN GENERAL.*—*Subject to*  
24        *paragraph (4), a person may participate in a pro-*

1        *ceeding under this chapter, including through the sub-*  
2        *mission of briefs or other information, only if—*

3                *“(A) that person has filed a petition to par-*  
4                *ticipate in accordance with paragraph (1) (ei-*  
5                *ther individually or as a group under paragraph*  
6                *(1)(B)), together with a filing fee of \$150;*

7                *“(B) the Copyright Royalty Judges have not*  
8                *determined that the petition to participate is*  
9                *facially invalid; and*

10               *“(C) the Copyright Royalty Judges have not*  
11               *determined, sua sponte or on the motion of an-*  
12               *other participant in the proceeding, that the per-*  
13               *son lacks a significant interest in the proceeding.*

14               *“(3) VOLUNTARY NEGOTIATION PERIOD.—*

15               *“(A) IN GENERAL.—Promptly after the date*  
16               *for filing of petitions to participate in a pro-*  
17               *ceeding, the Copyright Royalty Judges shall*  
18               *make available to all participants in the pro-*  
19               *ceeding a list of such participants and shall ini-*  
20               *tiate a voluntary negotiation period among the*  
21               *participants.*

22               *“(B) LENGTH OF PROCEEDINGS.—The vol-*  
23               *untary negotiation period initiated under sub-*  
24               *paragraph (A) shall be 3 months.*

1           “(C) *DETERMINATION OF SUBSEQUENT*  
 2           *PROCEEDINGS.—At the close of the voluntary ne-*  
 3           *gotiation proceedings, the Copyright Royalty*  
 4           *Judges shall, if further proceedings under this*  
 5           *chapter are necessary, determine whether and to*  
 6           *what extent paragraphs (4) and (5) will apply*  
 7           *to the parties.*

8           “(4) *SMALL CLAIMS PROCEDURE IN DISTRIBUTION*  
 9           *PROCEEDINGS.—*

10           “(A) *IN GENERAL.—If, in a proceeding*  
 11           *under this chapter to determine the distribution*  
 12           *of royalties, a participant in the proceeding as-*  
 13           *serts a claim in the amount of \$10,000 or less,*  
 14           *the Copyright Royalty Judges shall decide the*  
 15           *controversy on the basis of the filing of the writ-*  
 16           *ten direct statement by the participant, the re-*  
 17           *sponse by any opposing participant, and 1 addi-*  
 18           *tional response by each such party. The partici-*  
 19           *pant asserting the claim shall not be required to*  
 20           *pay the filing fee under paragraph (2).*

21           “(B) *BAD FAITH INFLATION OF CLAIM.—If*  
 22           *the Copyright Royalty Judges determine that a*  
 23           *participant asserts in bad faith an amount in*  
 24           *controversy in excess of \$10,000 for the purpose*  
 25           *of avoiding a determination under the procedure*

1        *set forth in subparagraph (A), the Copyright*  
2        *Royalty Judges shall impose a fine on that par-*  
3        *ticipant in an amount not to exceed the dif-*  
4        *ference between the actual amount distributed*  
5        *and the amount asserted by the participant.*

6        *“(5) PAPER PROCEEDINGS.—The Copyright Roy-*  
7        *alty Judges in proceedings under this chapter may*  
8        *decide, sua sponte or upon motion of a participant,*  
9        *to determine issues on the basis of the filing of the*  
10       *written direct statement by the participant, the re-*  
11       *sponse by any opposing participant, and one addi-*  
12       *tional response by each such participant. Prior to*  
13       *making such decision to proceed on such a paper*  
14       *record only, the Copyright Royalty Judges shall offer*  
15       *to all parties to the proceeding the opportunity to*  
16       *comment on the decision. The procedure under this*  
17       *paragraph—*

18       *“(A) shall be applied in cases in which*  
19       *there is no genuine issue of material fact, there*  
20       *is no need for evidentiary hearings, and all par-*  
21       *ticipants in the proceeding agree in writing to*  
22       *the procedure; and*

23       *“(B) may be applied under such other cir-*  
24       *cumstances as the Copyright Royalty Judges*  
25       *consider appropriate.*

1 “(6) *REGULATIONS.*—

2 “(A) *IN GENERAL.*—*The Copyright Royalty*  
3 *Judges may issue regulations to carry out their*  
4 *functions under this title. All regulations issued*  
5 *by the Copyright Royalty Judges are subject to*  
6 *the approval of the Librarian of Congress. Not*  
7 *later than 120 days after Copyright Royalty*  
8 *Judges or interim Copyright Royalty Judges, as*  
9 *the case may be, are first appointed after the en-*  
10 *actment of the Copyright Royalty and Distribu-*  
11 *tion Reform Act of 2004, such judges shall issue*  
12 *regulations to govern proceedings under this*  
13 *chapter.*

14 “(B) *INTERIM REGULATIONS.*—*Until regu-*  
15 *lations are adopted under subparagraph (A), the*  
16 *Copyright Royalty Judges shall apply the regu-*  
17 *lations in effect under this chapter on the day*  
18 *before the effective date of the Copyright Royalty*  
19 *and Distribution Reform Act of 2004, to the ex-*  
20 *tent such regulations are not inconsistent with*  
21 *this chapter, except that functions carried out*  
22 *under such regulations by the Librarian of Con-*  
23 *gress, the Register of Copyrights, or copyright ar-*  
24 *bitration royalty panels that, as of such date of*  
25 *enactment, are to be carried out by the Copy-*

1       *right Royalty Judges under this chapter, shall be*  
2       *carried out by the Copyright Royalty Judges*  
3       *under such regulations.*

4               “(C) *REQUIREMENTS.—Regulations issued*  
5       *under subparagraph (A) shall include the fol-*  
6       *lowing:*

7               “(i) *The written direct statements of*  
8       *all participants in a proceeding under*  
9       *paragraph (2) shall be filed by a date speci-*  
10      *fied by the Copyright Royalty Judges,*  
11      *which may be no earlier than four months,*  
12      *and no later than five months, after the end*  
13      *of the voluntary negotiation period under*  
14      *paragraph (3). Notwithstanding the pre-*  
15      *ceding sentence, the Copyright Royalty*  
16      *Judges may allow a participant in a pro-*  
17      *ceeding to file an amended written direct*  
18      *statement based on new information re-*  
19      *ceived during the discovery process, within*  
20      *15 days after the end of the discovery period*  
21      *specified in clause (iii).*

22              “(ii)(I) *Following the submission to*  
23      *the Copyright Royalty Judges of written di-*  
24      *rect statements by the participants in a*  
25      *proceeding under paragraph (2), the judges*



1           *shall meet with the participants for the pur-*  
2           *pose of setting a schedule for conducting*  
3           *and completing discovery. Such schedule*  
4           *shall be determined by the Copyright Roy-*  
5           *alty Judges.*

6           “(II) In this chapter, the term ‘written  
7           direct statements’ means witness statements,  
8           testimony, and exhibits to be presented in  
9           the proceedings, and such other information  
10          that is necessary to establish terms and  
11          rates, or the distribution of royalty pay-  
12          ments, as the case may be, as set forth in  
13          regulations issued by the Copyright Royalty  
14          Judges.

15          “(iii) Hearsay may be admitted in  
16          proceedings under this chapter to the extent  
17          deemed appropriate by the Copyright Roy-  
18          alty Judges.

19          “(iv) Discovery in such proceedings  
20          shall be permitted for a period of 60 days,  
21          except for discovery ordered by the Copy-  
22          right Royalty Judges in connection with the  
23          resolution of motions, orders and disputes  
24          pending at the end of such period.

1           “(v) *Any participant under paragraph*  
2           *(2) in a proceeding under this chapter to*  
3           *determine royalty rates may request of an*  
4           *opposing participant nonprivileged docu-*  
5           *ments directly related to the written direct*  
6           *statement of that participant. Any objection*  
7           *to such a request shall be resolved by a mo-*  
8           *tion or request to compel production made*  
9           *to the Copyright Royalty Judges according*  
10          *to regulations adopted by the Copyright*  
11          *Royalty Judges. Each motion or request to*  
12          *compel discovery shall be determined by the*  
13          *Copyright Royalty Judges, or by a Copy-*  
14          *right Royalty Judge when permitted under*  
15          *subsection (a)(2). Upon such motion, the*  
16          *Copyright Royalty Judges may order dis-*  
17          *covery pursuant to regulations established*  
18          *under this paragraph.*

19          “(vi) *Any participant under para-*  
20          *graph (2) in a proceeding under this chap-*  
21          *ter to determine royalty rates may, upon a*  
22          *written motion to the Copyright Royalty*  
23          *Judges, request of an opposing participant*  
24          *or witness other relevant information and*  
25          *materials if absent the discovery sought the*

1            *moving party would be prejudiced or the*  
2            *Copyright Royalty Judges' resolution of the*  
3            *proceeding would be substantially impaired.*  
4            *Absent a showing of substantial good cause*  
5            *or demonstration of a likelihood of substan-*  
6            *tial prejudice, no participant in a pro-*  
7            *ceeding may take more than 3 depositions*  
8            *and propound more than 10 interrogatories*  
9            *in that proceeding. Absent such a showing,*  
10           *the total number of depositions ordered in*  
11           *such a proceeding shall not exceed 10, and*  
12           *the total number of interrogatories shall not*  
13           *exceed 25 in each proceeding. In deter-*  
14           *mining whether discovery will be granted*  
15           *under this clause, the Copyright Royalty*  
16           *Judges may consider—*

17                    *“(I) whether the information*  
18                    *sought would serve to protect the integ-*  
19                    *egrity of the proceeding, to prevent sub-*  
20                    *stantial prejudice to any participant,*  
21                    *or to correct a material misrepresenta-*  
22                    *tion or omission by any participant;*

23                    *“(II) whether the burden or ex-*  
24                    *pense of producing the requested infor-*  
25                    *mation or materials outweighs the like-*

1            *ly benefit, taking into account the*  
2            *needs and resources of the participants,*  
3            *the importance of the issues at stake,*  
4            *and the probative value of the re-*  
5            *quested information or materials in re-*  
6            *solving such issues;*

7            *“(III) whether the requested infor-*  
8            *mation or materials would be unrea-*  
9            *sonably cumulative or duplicative, or*  
10           *are obtainable from another source that*  
11           *is more convenient, less burdensome, or*  
12           *less expensive; and*

13           *“(IV) whether the participant*  
14           *seeking discovery has had ample oppor-*  
15           *tunity by discovery in the proceeding*  
16           *or by other means to obtain the infor-*  
17           *mation sought.*

18           *“(vii) The rules and practices in effect*  
19           *on the day before the effective date of the*  
20           *Copyright Royalty and Distribution Reform*  
21           *Act of 2004, relating to discovery in pro-*  
22           *ceedings under this chapter to determine the*  
23           *distribution of royalty fees, shall continue to*  
24           *apply to such proceedings on and after such*  
25           *effective date.*

1           “(viii) *In proceedings to determine*  
2           *royalty rates, the Copyright Royalty Judges*  
3           *may issue a subpoena commanding a par-*  
4           *ticipant or witness in a proceeding to deter-*  
5           *mine royalty rates to appear and give testi-*  
6           *mony or to produce and permit inspection*  
7           *of documents or tangible things if the Copy-*  
8           *right Royalty Judges’ resolution of the pro-*  
9           *ceeding would be substantially impaired by*  
10           *the absence of such testimony or production*  
11           *of documents or tangible things. Such sub-*  
12           *poena shall specify with reasonable particu-*  
13           *larity the materials to be produced or the*  
14           *scope and nature of the required testimony.*  
15           *Nothing in this subparagraph shall preclude*  
16           *the Copyright Royalty Judges from request-*  
17           *ing the production by a nonparticipant of*  
18           *information or materials relevant to the res-*  
19           *olution by the Copyright Royalty Judges of*  
20           *a material issue of fact. A Copyright Roy-*  
21           *alty Judge may not issue a subpoena under*  
22           *this clause to any person who was a partic-*  
23           *ipant in a proceeding to determine royalty*  
24           *rates and has negotiated a settlement with*  
25           *respect to those rates.*

1           “(ix) *The Copyright Royalty Judges*  
 2           *shall order a settlement conference among*  
 3           *the participants in the proceeding to facili-*  
 4           *tate the presentation of offers of settlement*  
 5           *among the participants. The settlement con-*  
 6           *ference shall be held during a 21-day period*  
 7           *following the end of the discovery period*  
 8           *and shall take place outside the presence of*  
 9           *the Copyright Royalty Judges.*

10           “(x) *No evidence, including exhibits,*  
 11           *may be submitted in the written direct*  
 12           *statement of a participant without a spon-*  
 13           *soring witness, except where the Copyright*  
 14           *Royalty Judges have taken official notice,*  
 15           *or in the case of incorporation by reference*  
 16           *of past records, or for good cause shown.*

17           “(c) *DETERMINATION OF COPYRIGHT ROYALTY*  
 18           *JUDGES.—*

19           “(1) *TIMING.—The Copyright Royalty Judges*  
 20           *shall issue their determination in a proceeding not*  
 21           *later than 11 months after the conclusion of the 21-*  
 22           *day settlement conference period under subsection*  
 23           *(b)(3)(C)(vi), but, in the case of a proceeding to deter-*  
 24           *mine successors to rates or terms that expire on a*  
 25           *specified date, in no event later than 15 days before*

1       *the expiration of the then current statutory rates and*  
2       *terms.*

3               “(2) *REHEARINGS.*—

4               “(A) *IN GENERAL.*—*The Copyright Royalty*  
5       *Judges may, in exceptional cases, upon motion*  
6       *of a participant under subsection (b)(2), order a*  
7       *rehearing, after the determination in a pro-*  
8       *ceeding is issued under paragraph (1), on such*  
9       *matters as the Copyright Royalty Judges deter-*  
10       *mine to be appropriate.*

11              “(B) *TIMING FOR FILING MOTION.*—*Any*  
12       *motion for a rehearing under subparagraph (A)*  
13       *may only be filed within 15 days after the date*  
14       *on which the Copyright Royalty Judges deliver*  
15       *their initial determination concerning rates and*  
16       *terms to the participants in the proceeding.*

17              “(C) *PARTICIPATION BY OPPOSING PARTY*  
18       *NOT REQUIRED.*—*In any case in which a rehear-*  
19       *ing is ordered, any opposing party shall not be*  
20       *required to participate in the rehearing, except*  
21       *as provided under subsection (d)(1).*

22              “(D) *NO NEGATIVE INFERENCE.*—*No nega-*  
23       *tive inference shall be drawn from lack of par-*  
24       *ticipation in a rehearing.*

1           “(E) *CONTINUITY OF RATES AND TERMS.*—

2           (i) *If the decision of the Copyright Royalty*  
3           *Judges on any motion for a rehearing is not ren-*  
4           *dered before the expiration of the statutory rates*  
5           *and terms that were previously in effect, in the*  
6           *case of a proceeding to determine successors to*  
7           *rates and terms that expire on a specified date,*  
8           *then—*

9                   “(I) *the initial determination of the*  
10           *Copyright Royalty Judges that is the sub-*  
11           *ject of the rehearing motion shall be effective*  
12           *as of the day following the date on which*  
13           *the rates and terms that were previously in*  
14           *effect expire; and*

15                   “(II) *in the case of a proceeding under*  
16           *section 114(f)(1)(C) or 114(f)(2)(C), royalty*  
17           *rates and terms shall, for purposes of sec-*  
18           *tion 114(f)(4)(B), be deemed to have been*  
19           *set at those rates and terms contained in the*  
20           *initial determination of the Copyright Roy-*  
21           *alty Judges that is the subject of the rehear-*  
22           *ing motion, as of the date of that deter-*  
23           *mination.*

24                   “(ii) *The pendency of a motion for a re-*  
25           *hearing under this paragraph shall not relieve*



1        *persons obligated to make royalty payments who*  
2        *would be affected by the determination on that*  
3        *motion from providing the statements of account*  
4        *and any reports of use, to the extent required,*  
5        *and paying the royalties required under the rel-*  
6        *evant determination or regulations.*

7                *“(iii) Notwithstanding clause (ii), whenever*  
8        *royalties described in clause (ii) are paid to a*  
9        *person other than the Copyright Office, the entity*  
10       *designated by the Copyright Royalty Judges to*  
11       *which such royalties are paid by the copyright*  
12       *user (and any successor thereto) shall, within 60*  
13       *days after the motion for rehearing is resolved*  
14       *or, if the motion is granted, within 60 days after*  
15       *the rehearing is concluded, return any excess*  
16       *amounts previously paid to the extent necessary*  
17       *to comply with the final determination of roy-*  
18       *alty rates by the Copyright Royalty Judges.*

19                *“(3) CONTENTS OF DETERMINATION.—A deter-*  
20       *mination of the Copyright Royalty Judges shall be*  
21       *supported by the written record and shall set forth the*  
22       *findings of fact relied on by the Copyright Royalty*  
23       *Judges. Among other terms adopted in a determina-*  
24       *tion, the Copyright Royalty Judges may specify no-*  
25       *tice and recordkeeping requirements of users of the*

1       *copyrights at issue that apply in lieu of those that*  
2       *would otherwise apply under regulations.*

3               “(4) *CONTINUING JURISDICTION.*—*The Copyright*  
4       *Royalty Judges may, with the approval of the Reg-*  
5       *ister of Copyrights, issue an amendment to a written*  
6       *determination to correct any technical or clerical er-*  
7       *rors in the determination or to modify the terms, but*  
8       *not the rates, of royalty payments in response to un-*  
9       *foreseen circumstances that would frustrate the proper*  
10       *implementation of such determination. Such amend-*  
11       *ment shall be set forth in a written addendum to the*  
12       *determination that shall be distributed to the partici-*  
13       *pants of the proceeding and shall be published in the*  
14       *Federal Register.*

15               “(5) *PROTECTIVE ORDER.*—*The Copyright Roy-*  
16       *alty Judges may issue such orders as may be appro-*  
17       *priate to protect confidential information, including*  
18       *orders excluding confidential information from the*  
19       *record of the determination that is published or made*  
20       *available to the public, except that any terms or rates*  
21       *of royalty payments or distributions may not be ex-*  
22       *cluded.*

23               “(6) *PUBLICATION OF DETERMINATION.*—*The Li-*  
24       *brarian of Congress shall cause the determination,*  
25       *and any corrections thereto, to be published in the*

1 *Federal Register. The Librarian of Congress shall also*  
2 *publicize the determination and corrections in such*  
3 *other manner as the Librarian considers appropriate,*  
4 *including, but not limited to, publication on the*  
5 *Internet. The Librarian of Congress shall also make*  
6 *the determination, corrections, and the accompanying*  
7 *record available for public inspection and copying.*

8 “(7) *LATE PAYMENT.*—A determination of Copy-  
9 *right Royalty Judges may include terms with respect*  
10 *to late payment, but in no way shall such terms pre-*  
11 *vent the copyright holder from asserting other rights*  
12 *or remedies provided under this title.*

13 “(d) *JUDICIAL REVIEW.*—

14 “(1) *APPEAL.*—Any determination of the Copy-  
15 *right Royalty Judges under subsection (c) may, with-*  
16 *in 30 days after the publication of the determination*  
17 *in the Federal Register, be appealed, to the United*  
18 *States Court of Appeals for the District of Columbia*  
19 *Circuit, by any aggrieved participant in the pro-*  
20 *ceeding under subsection (b)(2) who fully participated*  
21 *in the proceeding and who would be bound by the de-*  
22 *termination. Any party that did not participate in a*  
23 *rehearing may not raise any issue that was the sub-*  
24 *ject of that rehearing at any stage of judicial review*  
25 *of the hearing determination. If no appeal is brought*

1       *within that 30-day period, the determination of the*  
 2       *Copyright Royalty Judges shall be final, and the roy-*  
 3       *alty fee or determination with respect to the distribu-*  
 4       *tion of fees, as the case may be, shall take effect as*  
 5       *set forth in paragraph (2).*

6               “(2) *EFFECT OF RATES.*—

7               “(A) *EXPIRATION ON SPECIFIED DATE.*—

8       *When this title provides that the royalty rates*  
 9       *and terms that were previously in effect are to*  
 10       *expire on a specified date, any adjustment or de-*  
 11       *termination by the Copyright Royalty Judges of*  
 12       *successor rates and terms for an ensuing statu-*  
 13       *tory license period shall be effective as of the day*  
 14       *following the date of expiration of the rates and*  
 15       *terms that were previously in effect, even if the*  
 16       *determination of the Copyright Royalty Judges*  
 17       *is rendered on a later date.*

18              “(B) *OTHER CASES.*—*In cases where rates*  
 19       *and terms do not expire on a specified date or*  
 20       *have not yet been established, the Copyright Roy-*  
 21       *alty Judges shall determine the dates that suc-*  
 22       *cessor or new rates or terms shall take effect. Ex-*  
 23       *cept as otherwise provided in this title, the rates*  
 24       *and terms previously in effect, to the extent ap-*

1        *plicable, shall remain in effect until such suc-*  
2        *cessor rates and terms become effective.*

3                *“(C) OBLIGATION TO MAKE PAYMENTS.—*

4                *“(i) The pendency of an appeal under*  
5        *this subsection shall not relieve persons obli-*  
6        *gated to make royalty payments under sec-*  
7        *tion 111, 112, 114, 115, 116, 118, 119, or*  
8        *1003, who would be affected by the deter-*  
9        *mination on appeal, from—*

10                *“(I) providing the statements of*  
11                *account and any report of use; and*

12                *“(II) paying the royalties re-*  
13                *quired under the relevant determina-*  
14                *tion or regulations.*

15                *“(ii) Notwithstanding clause (i), whenever*  
16        *royalties described in clause (i) are paid to a*  
17        *person other than the Copyright Office, the entity*  
18        *designated by the Copyright Royalty Judges to*  
19        *which such royalties are paid by the copyright*  
20        *user (and any successor thereto) shall, within 60*  
21        *days after the final resolution of the appeal, re-*  
22        *turn any excess amounts previously paid (and*  
23        *interest thereon, if ordered pursuant to para-*  
24        *graph (3)) to the extent necessary to comply with*

1           *the final determination of royalty rates on ap-*  
 2           *peal.*

3           “(3) *JURISDICTION OF COURT.*—*If the court,*  
 4           *pursuant to section 706 of title 5, modifies or vacates*  
 5           *a determination of the Copyright Royalty Judges, the*  
 6           *court may enter its own determination with respect*  
 7           *to the amount or distribution of royalty fees and*  
 8           *costs, and order the repayment of any excess fees, the*  
 9           *payment of any underpaid fees, and the payment of*  
 10           *interest pertaining respectively thereto, in accordance*  
 11           *with its final judgment. The court may also vacate*  
 12           *the determination of the Copyright Royalty Judges*  
 13           *and remand the case to the Copyright Royalty Judges*  
 14           *for further proceedings in accordance with subsection*  
 15           *(a).*

16           “(e) *ADMINISTRATIVE MATTERS.*—

17           “(1) *DEDUCTION OF COSTS OF LIBRARY OF CON-*  
 18           *GRESS AND COPYRIGHT OFFICE FROM FILING FEES.*—

19           “(A) *DEDUCTION FROM FILING FEES.*—*The*  
 20           *Librarian of Congress may, to the extent not oth-*  
 21           *erwise provided under this title, deduct from the*  
 22           *filing fees collected under subsection (b) for a*  
 23           *particular proceeding under this chapter the rea-*  
 24           *sonable costs incurred by the Librarian of Con-*  
 25           *gress, the Copyright Office, and the Copyright*

1       *Royalty Judges in conducting that proceeding,*  
 2       *other than the salaries of the Copyright Royalty*  
 3       *Judges and the 3 staff members appointed under*  
 4       *section 802(b).*

5               “(B) *AUTHORIZATION OF APPROPRIA-*  
 6       *TIONS.—There are authorized to be appropriated*  
 7       *such sums as may be necessary to pay the costs*  
 8       *incurred under this chapter not covered by the*  
 9       *filing fees collected under subsection (b). All*  
 10       *funds made available pursuant to this subpara-*  
 11       *graph shall remain available until expended.*

12               “(2) *POSITIONS REQUIRED FOR ADMINISTRATION*  
 13       *OF COMPULSORY LICENSING.—Section 307 of the Leg-*  
 14       *islative Branch Appropriations Act, 1994, shall not*  
 15       *apply to employee positions in the Library of Con-*  
 16       *gress that are required to be filled in order to carry*  
 17       *out section 111, 112, 114, 115, 116, 118, or 119 or*  
 18       *chapter 10.*

19       **“§ 804. *Institution of proceedings***

20               “(a) *FILING OF PETITION.—With respect to pro-*  
 21       *ceedings referred to in paragraphs (1) and (2) of section*  
 22       *801(b) concerning the determination or adjustment of roy-*  
 23       *alty rates as provided in sections 111, 112, 114, 115, 116,*  
 24       *118, 119, and 1004, during the calendar years specified in*  
 25       *the schedule set forth in subsection (b), any owner or user*

1 of a copyrighted work whose royalty rates are specified by  
 2 this title, or are established under this chapter before or  
 3 after the enactment of the Copyright Royalty and Distribu-  
 4 tion Reform Act of 2004, may file a petition with the Copy-  
 5 right Royalty Judges declaring that the petitioner requests  
 6 a determination or adjustment of the rate. The Copyright  
 7 Royalty Judges shall make a determination as to whether  
 8 the petitioner has such a significant interest in the royalty  
 9 rate in which a determination or adjustment is requested.  
 10 If the Copyright Royalty Judges determine that the peti-  
 11 tioner has such a significant interest, the Copyright Roy-  
 12 alty Judges shall cause notice of this determination, with  
 13 the reasons for such determination, to be published in the  
 14 Federal Register, together with the notice of commencement  
 15 of proceedings under this chapter. With respect to pro-  
 16 ceedings under paragraph (1) of section 801(b) concerning  
 17 the determination or adjustment of royalty rates as pro-  
 18 vided in sections 112 and 114, during the calendar years  
 19 specified in the schedule set forth in subsection (b), the  
 20 Copyright Royalty Judges shall cause notice of commence-  
 21 ment of proceedings under this chapter to be published in  
 22 the Federal Register as provided in section 803(b)(1)(A).  
 23       “(b) *TIMING OF PROCEEDINGS.*—  
 24               “(1) *SECTION 111 PROCEEDINGS.*—(A) A petition  
 25       described in subsection (a) to initiate proceedings



1        *under section 801(b)(2) concerning the adjustment of*  
2        *royalty rates under section 111 to which subpara-*  
3        *graph (A) or (D) of section 801(b)(2) applies may be*  
4        *filed during the year 2005 and in each subsequent*  
5        *fifth calendar year.*

6                *“(B) In order to initiate proceedings under sec-*  
7        *tion 801(b)(2) concerning the adjustment of royalty*  
8        *rates under section 111 to which subparagraph (B) or*  
9        *(C) of section 801(b)(2) applies, within 12 months*  
10       *after an event described in either of those subsections,*  
11       *any owner or user of a copyrighted work whose roy-*  
12       *alty rates are specified by section 111, or by a rate*  
13       *established under this chapter before or after the en-*  
14       *actment of the Copyright Royalty and Distribution*  
15       *Reform Act of 2004, may file a petition with the*  
16       *Copyright Royalty Judges declaring that the peti-*  
17       *tioner requests an adjustment of the rate. The Copy-*  
18       *right Royalty Judges shall then proceed as set forth*  
19       *in subsection (a) of this section. Any change in roy-*  
20       *alty rates made under this chapter pursuant to this*  
21       *subparagraph may be reconsidered in the year 2005,*  
22       *and each fifth calendar year thereafter, in accordance*  
23       *with the provisions in section 801(b)(3) (B) or (C),*  
24       *as the case may be. A petition for adjustment of rates*  
25       *under section 11(d)(1)(B) as a result of a change is*

1     *the rules and regulations of the Federal Communica-*  
 2     *tions Commission shall set forth the change on which*  
 3     *the petition is based.*

4             “(2) *CERTAIN SECTION 112 PROCEEDINGS.—Pro-*  
 5     *ceedings under this chapter shall be commenced in the*  
 6     *year 2007 to determine reasonable terms and rates of*  
 7     *royalty payments for the activities described in sec-*  
 8     *tion 112(e)(1) relating to the limitation on exclusive*  
 9     *rights specified by section 114(d)(1)(C)(iv), to become*  
 10    *effective on January 1, 2009. Such proceedings shall*  
 11    *be repeated in each subsequent fifth calendar year.*

12            “(3) *SECTION 114 AND CORRESPONDING 112 PRO-*  
 13    *CEEDINGS.—*

14            “(A) *FOR ELIGIBLE NONSUBSCRIPTION*  
 15    *SERVICES AND NEW SUBSCRIPTION SERVICES.—*  
 16    *Proceedings under this chapter shall be com-*  
 17    *menced as soon as practicable after the effective*  
 18    *date of the Copyright Royalty and Distribution*  
 19    *Reform Act of 2004 to determine reasonable*  
 20    *terms and rates of royalty payments under sec-*  
 21    *tions 114 and 112 for the activities of eligible*  
 22    *nonsubscription transmission services and new*  
 23    *subscription services, to be effective for the period*  
 24    *beginning on January 1, 2006, and ending on*  
 25    *December 31, 2010. Such proceedings shall next*

1       *be commenced in January 2009 to determine*  
2       *reasonable terms and rates of royalty payments,*  
3       *to become effective on January 1, 2011. There-*  
4       *after, such proceedings shall be repeated in each*  
5       *subsequent fifth calendar year.*

6               “(B) *FOR PREEXISTING SUBSCRIPTION AND*  
7       *SATELLITE DIGITAL AUDIO RADIO SERVICES.—*  
8       *Proceedings under this chapter shall be com-*  
9       *menced in January 2006 to determine reasonable*  
10       *terms and rates of royalty payments under sec-*  
11       *tions 114 and 112 for the activities of pre-*  
12       *existing subscription services, to be effective dur-*  
13       *ing the period beginning on January 1, 2008,*  
14       *and ending on December 31, 2012, and pre-*  
15       *existing satellite digital audio radio services, to*  
16       *be effective during the period beginning on Janu-*  
17       *ary 1, 2007, and ending on December 31, 2012.*  
18       *Such proceedings shall next be commenced in*  
19       *2011 to determine reasonable terms and rates of*  
20       *royalty payments, to become effective on Janu-*  
21       *ary 1, 2013. Thereafter, such proceedings shall be*  
22       *repeated in each subsequent fifth calendar year.*

23               “(C)(i) *Notwithstanding any other provi-*  
24       *sion of this chapter, this subparagraph shall gov-*  
25       *ern proceedings commenced pursuant to section*

1           114(f)(1)(C) and 114(f)(2)(C) concerning new  
2           types of services.

3           “(ii) Not later than 30 days after a petition  
4           to determine rates and terms for a new type of  
5           service that is filed by any copyright owner of  
6           sound recordings, or such new type of service, in-  
7           dicating that such new type of service is or is  
8           about to become operational, the Copyright Roy-  
9           alty Judges shall issue a notice for a proceeding  
10          to determine rates and terms for such service.

11          “(iii) The proceeding shall follow the sched-  
12          ule set forth in such subsections (b), (c), and (d)  
13          of section 803, except that—

14               “(I) the determination shall be issued  
15               by not later than 24 months after the publi-  
16               cation of the notice under clause (ii); and

17               “(II) the decision shall take effect as  
18               provided in subsections (c)(2) and (d)(2) of  
19               section 803 and section 114(f)(4)(B)(ii) and  
20               (C).

21          “(iv) The rates and terms shall remain in  
22          effect for the period set forth in section  
23          114(f)(1)(C) or 114(f)(2)(C), as the case may be.

24          “(4) SECTION 115 PROCEEDINGS.—A petition de-  
25          scribed in subsection (a) to initiate proceedings under

1     *section 801(b)(1) concerning the adjustment or deter-*  
2     *mination of royalty rates as provided in section 115*  
3     *may be filed in the year 2006 and in each subsequent*  
4     *fifth calendar year, or at such other times as the par-*  
5     *ties have agreed under section 115(c)(3) (B) and (C).*

6             “(5) *SECTION 116 PROCEEDINGS.—(A) A petition*  
7     *described in subsection (a) to initiate proceedings*  
8     *under section 801(b) concerning the determination of*  
9     *royalty rates and terms as provided in section 116*  
10    *may be filed at any time within 1 year after nego-*  
11    *tiated licenses authorized by section 116 are termi-*  
12    *nated or expire and are not replaced by subsequent*  
13    *agreements.*

14            “(B) *If a negotiated license authorized by section*  
15    *116 is terminated or expires and is not replaced by*  
16    *another such license agreement which provides per-*  
17    *mission to use a quantity of musical works not sub-*  
18    *stantially smaller than the quantity of such works*  
19    *performed on coin-operated phonorecord players dur-*  
20    *ing the 1-year period ending March 1, 1989, the*  
21    *Copyright Royalty Judges shall, upon petition filed*  
22    *under paragraph (1) within 1 year after such termi-*  
23    *nation or expiration, commence a proceeding to*  
24    *promptly establish an interim royalty rate or rates*  
25    *for the public performance by means of a coin-oper-*

1        *ated phonorecord player of nondramatic musical*  
 2        *works embodied in phonorecords which had been sub-*  
 3        *ject to the terminated or expired negotiated license*  
 4        *agreement. Such rate or rates shall be the same as the*  
 5        *last such rate or rates and shall remain in force until*  
 6        *the conclusion of proceedings by the Copyright Roy-*  
 7        *alty Judges, in accordance with section 803, to adjust*  
 8        *the royalty rates applicable to such works, or until*  
 9        *superseded by a new negotiated license agreement, as*  
 10       *provided in section 116(b).*

11            *“(6) SECTION 118 PROCEEDINGS.—A petition de-*  
 12        *scribed in subsection (a) to initiate proceedings under*  
 13        *section 801(b)(1) concerning the determination of rea-*  
 14        *sonable terms and rates of royalty payments as pro-*  
 15        *vided in section 118 may be filed in the year 2006*  
 16        *and in each subsequent fifth calendar year.*

17            *“(7) SECTION 1004 PROCEEDINGS.—A petition*  
 18        *described in subsection (a) to initiate proceedings*  
 19        *under section 801(b)(1) concerning the adjustment of*  
 20        *reasonable royalty rates under section 1004 may be*  
 21        *filed as provided in section 1004(a)(3).*

22            *“(8) PROCEEDINGS CONCERNING DISTRIBUTION*  
 23        *OF ROYALTY FEES.—With respect to proceedings*  
 24        *under section 801(b)(3) concerning the distribution of*  
 25        *royalty fees in certain circumstances under section*

1       111, 119, or 1007, the Copyright Royalty Judges  
 2       shall, upon a determination that a controversy exists  
 3       concerning such distribution, cause to be published in  
 4       the Federal Register notice of commencement of pro-  
 5       ceedings under this chapter.

6       **“§ 805. General rule for voluntarily negotiated agree-**  
 7                 **ments**

8       *“Any rates or terms under this title that—*

9               *“(1) are agreed to by participants to a pro-*  
 10       *ceeding under section 803(b)(3),*

11              *“(2) are adopted by the Copyright Royalty*  
 12       *Judges as part of a determination under this chapter,*  
 13       *and*

14              *“(3) are in effect for a period shorter than would*  
 15       *otherwise apply under a determination pursuant to*  
 16       *this chapter,*

17       *shall remain in effect for such period of time as would other-*  
 18       *wise apply under such determination, except that the Copy-*  
 19       *right Royalty Judges shall adjust the rates pursuant to the*  
 20       *voluntary negotiations to reflect national monetary infla-*  
 21       *tion during the additional period the rates remain in ef-*  
 22       *fect.”.*

23       (b) CONFORMING AMENDMENT.—*The table of chapters*  
 24       *for title 17, United States Code, is amended by striking the*  
 25       *item relating to chapter 8 and inserting the following:*

**“8. Proceedings by Copyright Royalty Judges ..... 801”.**

1 **SEC. 4. DEFINITION.**

2       Section 101 is amended by inserting after the defini-  
3 tion of “copies” the following:

4           “A ‘Copyright Royalty Judge’ is a Copyright  
5 Royalty Judge appointed under section 802 of this  
6 title, and includes any individual serving as an in-  
7 terim Copyright Royalty Judge under such section.”.

8 **SEC. 5. TECHNICAL AMENDMENTS.**

9       (a) *CABLE RATES*.—Section 111(d) is amended—

10           (1) in paragraph (2), in the second sentence, by  
11 striking “a copyright arbitration royalty panel” and  
12 inserting “the Copyright Royalty Judges.”; and

13           (2) in paragraph (4)—

14               (A) in subparagraph (A), by striking “Li-  
15 brarian of Congress” each place it appears and  
16 inserting “Copyright Royalty Judges”;

17               (B) in subparagraph (B)—

18                   (i) in the first sentence, by striking  
19 “Librarian of Congress shall, upon the rec-  
20 ommendation of the Register of Copy-  
21 rights,” and inserting “Copyright Royalty  
22 Judges shall”;

23                   (ii) in the second sentence, by striking  
24 “Librarian determines” and inserting  
25 “Copyright Royalty Judges determine”; and

26                   (iii) in the third sentence—



1                   (I) by striking “Librarian” each  
2                   place it appears and inserting “Copy-  
3                   right Royalty Judges”; and

4                   (II) by striking “convene a copy-  
5                   right arbitration royalty panel” and  
6                   inserting “conduct a proceeding”; and

7                   (C) in subparagraph (C), by striking “Li-  
8                   brarian of Congress” and inserting “Copyright  
9                   Royalty Judges”.

10       (b) *EPHEMERAL RECORDINGS*.—Section 112(e) is  
11 amended—

12               (1) in paragraph (3)—

13                   (A) by amending the first sentence to read  
14                   as follows: “Proceedings under chapter 8 shall  
15                   determine reasonable rates and terms of royalty  
16                   payments for the activities specified by para-  
17                   graph (1) during the 5-year periods beginning  
18                   on January 1 of the second year following the  
19                   year in which the proceedings are to be com-  
20                   menced, or such other periods as the parties may  
21                   agree.”; and

22                   (B) by striking the second sentence;

23                   (C) in the third sentence, by striking “Li-  
24                   brarian of Congress” and inserting “Copyright  
25                   Royalty Judges”; and

1           (D) in the fourth sentence, by striking “ne-  
2           gotiation”;

3           (2) in paragraph (4)—

4           (A) by amending the first sentence to read  
5           as follows: “The schedule of reasonable rates and  
6           terms determined by the Copyright Royalty  
7           Judges shall, subject to paragraph (5), be bind-  
8           ing on all copyright owners of sound recordings  
9           and transmitting organizations entitled to a  
10          statutory license under this subsection during the  
11          5-year period specified in paragraph (3), or such  
12          other period as the parties may agree.”;

13          (B) by striking “copyright arbitration roy-  
14          alty panel” each subsequent place it appears and  
15          inserting “Copyright Royalty Judges”;

16          (C) in the fourth sentence, by striking “its  
17          decision” and inserting “their decision”;

18          (D) in the fifth sentence, by striking “nego-  
19          tiated as provided” and inserting “described”;  
20          and

21          (E) in the last sentence, by striking “Li-  
22          brarian of Congress” and inserting “Copyright  
23          Royalty Judges”;

24          (3) in paragraph (5), by striking “or decision by  
25          the Librarian of Congress” and inserting “, decision

1       *by the Librarian of Congress, or determination by the*  
 2       *Copyright Royalty Judges”;*

3               *(4) by striking paragraph (6) and redesignating*  
 4       *paragraphs (7), (8), and (9), as paragraphs (6), (7),*  
 5       *and (8), respectively; and*

6               *(5) in paragraph (6)(A), as so redesignated, by*  
 7       *striking “Librarian of Congress” and inserting*  
 8       *“Copyright Royalty Judges”.*

9       *(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORD-*  
 10       *INGS.—Section 114(f) is amended—*

11               *(1) in paragraph (1)—*

12                       *(A) in subparagraph (A)—*

13                               *(i) by amending the first sentence to*  
 14                               *read as follows: “Proceedings under chapter*  
 15                               *8 shall determine reasonable rates and*  
 16                               *terms of royalty payments for subscription*  
 17                               *transmissions by preexisting subscription*  
 18                               *services and transmissions by preexisting*  
 19                               *satellite digital audio radio services speci-*  
 20                               *fied by subsection (d)(2) during 5-year peri-*  
 21                               *ods beginning on January 1 of the second*  
 22                               *year following the year in which the pro-*  
 23                               *ceedings are to be commenced, except where*  
 24                               *different transitional periods are provided*

1           *in section 804(b), or such periods as the*  
2           *parties may agree.”;*

3           (ii) *in the third sentence, by striking*  
4           *“Librarian of Congress” and inserting*  
5           *“Copyright Royalty Judges”; and*

6           (iii) *in the fourth sentence, by striking*  
7           *“negotiation”;*

8           (B) *in subparagraph (B)—*

9           (i) *by amending the first sentence to*  
10          *read as follows: “The schedule of reasonable*  
11          *rates and terms determined by the Copy-*  
12          *right Royalty Judges shall, subject to para-*  
13          *graph (3), be binding on all copyright own-*  
14          *ers of sound recordings and entities per-*  
15          *forming sound recordings affected by this*  
16          *paragraph during the 5-year period speci-*  
17          *fied in subparagraph (A), a transitional pe-*  
18          *riod provided in section 804(b), or such*  
19          *other period as the parties may agree.”;*

20          (ii) *in the second sentence, by striking*  
21          *“copyright arbitration royalty panel” and*  
22          *inserting “Copyright Royalty Judges”; and*

23          (iii) *in the second sentence, by striking*  
24          *“negotiated as provided” and inserting “de-*  
25          *scribed”; and*

1                   (C) by amending subparagraph (C) to read  
2                   as follows:

3                   “(C) The procedures under subparagraphs (A)  
4                   and (B) also shall be initiated pursuant to a petition  
5                   filed by any copyright owners of sound recordings,  
6                   any preexisting subscription services, or any pre-  
7                   existing satellite digital audio radio services indi-  
8                   cating that a new type of subscription digital audio  
9                   transmission service on which sound recordings are  
10                  performed is or is about to become operational, for the  
11                  purpose of determining reasonable terms and rates of  
12                  royalty payments with respect to such new type of  
13                  transmission service for the period beginning with the  
14                  inception of such new type of service and ending on  
15                  the date on which the royalty rates and terms for sub-  
16                  scription digital audio transmission services most re-  
17                  cently determined under subparagraph (A) or (B)  
18                  and chapter 8 expire, or such other period as the par-  
19                  ties may agree.”;

20                  (2) in paragraph (2)—

21                   (A) in subparagraph (A)—

22                   (i) by amending the first paragraph to  
23                   read as follows: “Proceedings under chapter  
24                   8 shall determine reasonable rates and  
25                   terms of royalty payments for subscription

1 *transmissions by preexisting subscription*  
 2 *services and transmissions by preexisting*  
 3 *satellite digital audio radio services speci-*  
 4 *fied by subsection (d)(2) during 5-year peri-*  
 5 *ods beginning on January 1 of the second*  
 6 *year following the year in which the pro-*  
 7 *ceedings are to be commenced, except where*  
 8 *different transitional periods are provided*  
 9 *in section 804(b), or such periods as the*  
 10 *parties may agree.”;*

11 *(ii) in the third sentence, by striking*  
 12 *“Librarian of Congress” and inserting*  
 13 *“Copyright Royalty Judges”; and*

14 *(iii) in the fourth sentence, by striking*  
 15 *“negotiation”;*

16 *(B) in subparagraph (B)—*

17 *(i) by amending the first sentence to*  
 18 *read as follows: “The schedule of reasonable*  
 19 *rates and terms determined by the Copy-*  
 20 *right Royalty Judges shall, subject to para-*  
 21 *graph (3), be binding on all copyright own-*  
 22 *ers of sound recordings and entities per-*  
 23 *forming sound recordings affected by this*  
 24 *paragraph during the 5-year period speci-*  
 25 *fied in subparagraph (A), a transitional pe-*

1                   riod provided in section 804(b), or such  
2                   other period as the parties may agree.”;

3                   (ii) by striking “copyright arbitration  
4                   royalty panel” each subsequent place it ap-  
5                   pears and inserting “Copyright Royalty  
6                   Judges”; and

7                   (iii) in the last sentence by striking  
8                   “negotiated as provided” and inserting “de-  
9                   scribed in”; and

10                  (C) by amending subparagraph (C) to read  
11                  as follows:

12                  “(C) The procedures under subparagraphs (A)  
13                  and (B) shall also be initiated pursuant to a petition  
14                  filed by any copyright owners of sound recordings or  
15                  any eligible nonsubscription service or new subscrip-  
16                  tion service indicating that a new type of eligible  
17                  nonsubscription service or new subscription service on  
18                  which sound recordings are performed is or is about  
19                  to become operational, for the purpose of determining  
20                  reasonable terms and rates of royalty payments with  
21                  respect to such new type of service for the period be-  
22                  ginning with the inception of such new type of service  
23                  and ending on the date on which the royalty rates  
24                  and terms for preexisting subscription digital audio  
25                  transmission services or preexisting satellite digital

1       radio audio services, as the case may be, most re-  
2       cently determined under subparagraph (A) or (B)  
3       and chapter 8 expire, or such other period as the par-  
4       ties may agree.”;

5           (3) in paragraph (3), by striking “or decision by  
6       the Librarian of Congress” and inserting “, decision  
7       by the Librarian of Congress, or determination by the  
8       Copyright Royalty Judges”; and

9           (4) in paragraph (4)—

10           (A) by striking “Librarian of Congress”  
11       each place it appears and inserting “Copyright  
12       Royalty Judges”; and

13           (B) by adding after the first sentence “The  
14       notice and recordkeeping rules in effect on the  
15       day before the effective date of the Copyright  
16       Royalty and Distribution Reform Act of 2004  
17       shall remain in effect until new regulations are  
18       promulgated by the Copyright Royalty Judges. If  
19       new regulations are promulgated under this sub-  
20       paragraph, the Copyright Royalty Judges shall  
21       take into account the substance and effect of the  
22       rules in effect on the day before the effective date  
23       of the Copyright Royalty and Distribution Re-  
24       form Act of 2004 and shall, to the extent prac-  
25       ticable, avoid significant disruption of the func-



1            *tion of the designated agents that are authorized*  
 2            *to collect and distribute royalty fees as such*  
 3            *functions exist on the day prior to the effective*  
 4            *date of this Act.”.*

5            (d) *PHONORECORDS OF NONDRAMATIC MUSICAL*  
 6 *WORKS.—Section 115(c)(3) is amended—*

7            (1) *in subparagraph (A)(ii), by striking “(F)”*  
 8            *and inserting “(E)”;*

9            (2) *in subparagraph (B)—*

10            (A) *by striking “under this paragraph” and*  
 11            *inserting “under this section”; and*

12            (B) *by striking “subparagraphs (B) through*  
 13            *(F)” and inserting “this subparagraph and sub-*  
 14            *paragraphs (B) through (E)”;*

15            (3) *in subparagraph (C)—*

16            (A) *by amending the first sentence to read*  
 17            *as follows: “Proceedings under chapter 8 shall*  
 18            *determine reasonable rates and terms of royalty*  
 19            *payments for the activities specified by this sec-*  
 20            *tion during periods beginning with the effective*  
 21            *date of such rates and terms, but not earlier than*  
 22            *January 1 of the second year following the year*  
 23            *in which the petition requesting the proceeding is*  
 24            *filed, and ending on the effective date of successor*

1       *rates and terms, or such other period as the par-*  
 2       *ties may agree.”;*

3               *(B) in the third sentence, by striking “Li-*  
 4       *brarian of Congress” and inserting “Copyright*  
 5       *Royalty Judges”; and*

6               *(C) in the fourth sentence, by striking “ne-*  
 7       *gotiation”;*

8       *(4) in subparagraph (D)—*

9               *(A) by amending the first sentence to read*  
 10       *as follows: “The schedule of reasonable rates and*  
 11       *terms determined by the Copyright Royalty*  
 12       *Judges shall, subject to subparagraph (E), be*  
 13       *binding on all copyright owners of nondramatic*  
 14       *musical works and persons entitled to obtain a*  
 15       *compulsory license under subsection (a)(1) dur-*  
 16       *ing the period specified in subparagraph (C),*  
 17       *such other period as may be determined pursu-*  
 18       *ant to subparagraphs (B) and (C), or such other*  
 19       *period as the parties may agree.”;*

20               *(B) in the third sentence, by striking “copy-*  
 21       *right arbitration royalty panel” and inserting*  
 22       *“Copyright Royalty Judges”; and*

23               *(C) in the third sentence, by striking “nego-*  
 24       *tiated as provided in subparagraphs (B) and*  
 25       *(C)” and inserting “described”;*

1           (5) *in subparagraph (E)—*

2                *(A) in clause (i)—*

3                   *(i) in the first sentence, by striking*  
 4                   *“Librarian of Congress” and inserting “Li-*  
 5                   *brarian of Congress, Copyright Royalty*  
 6                   *Judges, or a copyright arbitration royalty*  
 7                   *panel to the extent those determinations*  
 8                   *were accepted by the Librarian of Con-*  
 9                   *gress”; and*

10                  *(ii) in the second sentence, by striking*  
 11                  *“(C), (D) or (F) shall be given effect” and*  
 12                  *inserting “(C) or (D) shall be given effect as*  
 13                  *to digital phonorecord deliveries”; and*

14                  *(B) in clause (ii)(I), by striking “(C), (D)*  
 15                  *or (F)” each place it appears and inserting “(C)*  
 16                  *or (D)”;* and

17           (6) *by striking subparagraph (F) and redesign-*  
 18           *ating subparagraphs (G) through (L) as subpara-*  
 19           *graphs (F) through (K), respectively.*

20           (e) *COIN-OPERATED PHONORECORD PLAYERS.—Sec-*  
 21           *tion 116 is amended—*

22                (1) *in subsection (b), by amending paragraph*

23                (2) *to read as follows:*

24                   “(2) *CHAPTER 8 PROCEEDING.—Parties not sub-*  
 25                   *ject to such a negotiation may have the terms and*

1 *rates and the division of fees described in paragraph*  
 2 *(1) determined in a proceeding in accordance with*  
 3 *the provisions of chapter 8.”; and*

4 *(2) in subsection (c)—*

5 *(A) in the subsection heading, by striking*  
 6 *“COPYRIGHT ARBITRATION ROYALTY PANEL DE-*  
 7 *TERMINATIONS” and inserting “DETERMINA-*  
 8 *TIONS BY COPYRIGHT ROYALTY JUDGES”; and*

9 *(B) by striking “a copyright arbitration*  
 10 *royalty panel” and inserting “the Copyright*  
 11 *Royalty Judges”.*

12 *(f) USE OF CERTAIN WORKS IN CONNECTION WITH*  
 13 *NONCOMMERCIAL BROADCASTING.—Section 118 is amend-*  
 14 *ed—*

15 *(1) in subsection (b)—*

16 *(A) in paragraph (1)—*

17 *(i) in the first sentence, by striking*  
 18 *“Librarian of Congress” and inserting*  
 19 *“Copyright Royalty Judges”; and*

20 *(ii) by striking the second and third*  
 21 *sentences;*

22 *(B) in paragraph (2), by striking “Librar-*  
 23 *ian of Congress:” and all that follows through the*  
 24 *end of the sentence and inserting “Librarian of*  
 25 *Congress, a copyright arbitration royalty panel,*

1        *or the Copyright Royalty Judges, to the extent*  
 2        *that they were accepted by the Librarian of Con-*  
 3        *gress, if copies of such agreements are filed with*  
 4        *the Copyright Royalty Judges within 30 days of*  
 5        *execution in accordance with regulations that the*  
 6        *Copyright Royalty Judges shall issue.”; and*

7                *(C) in paragraph (3)—*

8                    *(i) in the second sentence—*

9                                *(I) by striking “copyright arbitra-*  
 10                                *tion royalty panel” and inserting*  
 11                                *“Copyright Royalty Judges”; and*

12                                *(II) by striking “paragraph (2).”*  
 13                                *and inserting “paragraph (2) or (3).”;*

14                                *(ii) in the last sentence, by striking*  
 15                                *“Librarian of Congress” and inserting*  
 16                                *“Copyright Royalty Judges”; and*

17                                *(iii) by striking “(3) In” and all that*  
 18                                *follows through the end of the first sentence*  
 19                                *and inserting the following:*

20                                *“(3) Voluntary negotiation proceedings initiated*  
 21                                *pursuant to a petition filed under section 804(a) for*  
 22                                *the purpose of determining a schedule of terms and*  
 23                                *rates of royalty payments by public broadcasting en-*  
 24                                *tities to copyright owners in works specified by this*  
 25                                *subsection and the proportionate division of fees paid*

1       among various copyright owners shall cover the 5-  
 2       year period beginning on January 1 of the second  
 3       year following the year in which the petition is filed.  
 4       The parties to each negotiation proceeding shall bear  
 5       their own costs.

6               “(4) In the absence of license agreements nego-  
 7       tiated under paragraph (2) or (3), the Copyright  
 8       Royalty Judges shall, pursuant to chapter 8, conduct  
 9       a proceeding to determine and publish in the Federal  
 10      Register a schedule of rates and terms which, subject  
 11      to paragraph (2), shall be binding on all owners of  
 12      copyright in works specified by this subsection and  
 13      public broadcasting entities, regardless of whether  
 14      such copyright owners have submitted proposals to the  
 15      Copyright Royalty Judges.”;

16              (2) by striking subsection (c) and redesignating  
 17      subsections (d) through (g) as subsections (c) through  
 18      (f), respectively;

19              (3) in subsection (c), as so redesignated, in the  
 20      matter preceding paragraph (1)—

21                      (A) by striking “(b)(2)” and inserting  
 22                      “(b)(2) or (3)”;

23                      (B) by striking “(b)(3)” and inserting  
 24                      “(b)(4)”;

1           (C) by striking “a copyright arbitration  
2           royalty panel under subsection (b)(3)” and in-  
3           serting “the Copyright Royalty Judges under  
4           subsection (b)(3), to the extent that they were ac-  
5           cepted by the Librarian of Congress”;

6           (4) in subsection (d), as so redesignated—

7           (A) by striking “in the Copyright Office”  
8           and inserting “with the Copyright Royalty  
9           Judges”; and

10          (B) by striking “Register of Copyrights  
11          shall prescribe” and inserting “Copyright Roy-  
12          alty Judges shall prescribe as provided in section  
13          803(b)(6)”; and

14          (5) in subsection (f), as so redesignated, by strik-  
15          ing “(d)” and inserting “(c)”.

16          (g) *SECONDARY TRANSMISSIONS BY SATELLITE CAR-*  
17 *RIERS.*—Section 119(b) is amended—

18          (1) in paragraph (3), by striking “Librarian of  
19          Congress” and inserting “Copyright Royalty Judges”;  
20          and

21          (2) in paragraph (4)—

22          (A) in subparagraph (A), by striking “Li-  
23          brarian of Congress” each place it appears and  
24          inserting “Copyright Royalty Judges”; and

1           (B) by amending subparagraphs (B) and  
2           (C) to read as follows:

3           “(B) *DETERMINATION OF CONTROVERSY;*  
4           *DISTRIBUTIONS.*—After the first day of August of  
5           each year, the Copyright Royalty Judges shall  
6           determine whether there exists a controversy con-  
7           cerning the distribution of royalty fees. If the  
8           Copyright Royalty Judges determine that no  
9           such controversy exists, the Librarian of Con-  
10          gress shall, after deducting reasonable adminis-  
11          trative costs under this paragraph, distribute  
12          such fees to the copyright owners entitled to re-  
13          ceive them, or to their designated agents. If the  
14          Copyright Royalty Judges find the existence of a  
15          controversy, the Copyright Royalty Judges shall,  
16          pursuant to chapter 8 of this title, conduct a  
17          proceeding to determine the distribution of roy-  
18          alty fees.

19          “(C) *WITHHOLDING OF FEES DURING CON-*  
20          *TROVERSY.*—During the pendency of any pro-  
21          ceeding under this subsection, the Copyright  
22          Royalty Judges shall withhold from distribution  
23          an amount sufficient to satisfy all claims with  
24          respect to which a controversy exists, but shall



1           *have the discretion to proceed to distribute any*  
 2           *amounts that are not in controversy.”.*

3       (h) *DIGITAL AUDIO RECORDING DEVICES.*—

4           (1) *ROYALTY PAYMENTS.*—*Section 1004(a)(3) is*  
 5           *amended by striking “Librarian of Congress” each*  
 6           *place it appears and inserting “Copyright Royalty*  
 7           *Judges”.*

8           (2) *ENTITLEMENT TO ROYALTY PAYMENTS.*—*Sec-*  
 9           *tion 1006(c) is amended by striking “Librarian of*  
 10           *Congress shall convene a copyright arbitration roy-*  
 11           *alty panel which” and inserting “Copyright Royalty*  
 12           *Judges”.*

13           (3) *PROCEDURES FOR DISTRIBUTING ROYALTY*  
 14           *PAYMENTS.*—*Section 1007 is amended—*

15                   (A) *in subsection (a), by amending para-*  
 16                   *graph (1) to read as follows:*

17                   “(1) *FILING OF CLAIMS.*—*During the first 2*  
 18                   *months of each calendar year, every interested copy-*  
 19                   *right party seeking to receive royalty payments to*  
 20                   *which such party is entitled under section 1006 shall*  
 21                   *file with the Copyright Royalty Judges a claim for*  
 22                   *payments collected during the preceding year in such*  
 23                   *form and manner as the Copyright Royalty Judges*  
 24                   *shall prescribe by regulation.”; and*

1                   (B) by amending subsections (b) and (c) to  
2                   read as follows:

3           “(b) *DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF*  
4 *A DISPUTE.*—After the period established for the filing of  
5 claims under subsection (a), in each year, the Copyright  
6 Royalty Judges shall determine whether there exists a con-  
7 troversy concerning the distribution of royalty payments  
8 under section 1006(c). If the Copyright Royalty Judges de-  
9 termine that no such controversy exists, the Librarian of  
10 Congress shall, within 30 days after such determination,  
11 authorize the distribution of the royalty payments as set  
12 forth in the agreements regarding the distribution of royalty  
13 payments entered into pursuant to subsection (a). The Li-  
14 brarian of Congress shall, before such royalty payments are  
15 distributed, deduct the reasonable administrative costs in-  
16 curred by the Librarian under this section.

17           “(c) *RESOLUTION OF DISPUTES.*—If the Copyright  
18 Royalty Judges find the existence of a controversy, the  
19 Copyright Royalty Judges shall, pursuant to chapter 8 of  
20 this title, conduct a proceeding to determine the distribution  
21 of royalty payments. During the pendency of such a pro-  
22 ceeding, the Copyright Royalty Judges shall withhold from  
23 distribution an amount sufficient to satisfy all claims with  
24 respect to which a controversy exists, but shall, to the extent  
25 feasible, authorize the distribution of any amounts that are

1 *not in controversy. The Librarian of Congress shall, before*  
 2 *such royalty payments are distributed, deduct the reason-*  
 3 *able administrative costs incurred by the Librarian under*  
 4 *this section.”.*

5 (4) *DETERMINATION OF CERTAIN DISPUTES.—*

6 (A) *Section 1010 is amended to read as follows:*

7 **“§ 1010. Determination of certain disputes**

8 “(a) *SCOPE OF DETERMINATION.—Before the date of*  
 9 *first distribution in the United States of a digital audio*  
 10 *recording device or a digital audio interface device, any*  
 11 *party manufacturing, importing, or distributing such de-*  
 12 *vice, and any interested copyright party may mutually*  
 13 *agree to petition the Copyright Royalty Judges to determine*  
 14 *whether such device is subject to section 1002, or the basis*  
 15 *on which royalty payments for such device are to be made*  
 16 *under section 1003.*

17 “(b) *INITIATION OF PROCEEDINGS.—The parties under*  
 18 *subsection (a) shall file the petition with the Copyright Roy-*  
 19 *alty Judges requesting the commencement of a proceeding.*  
 20 *Within 2 weeks after receiving such a petition, the Chief*  
 21 *Copyright Royalty Judge shall cause notice to be published*  
 22 *in the Federal Register of the initiation of the proceeding.*

23 “(c) *STAY OF JUDICIAL PROCEEDINGS.—Any civil ac-*  
 24 *tion brought under section 1009 against a party to a pro-*  
 25 *ceeding under this section shall, on application of one of*

1 *the parties to the proceeding, be stayed until completion of*  
 2 *the proceeding.*

3       “(d) *PROCEEDING.*—*The Copyright Royalty Judges*  
 4 *shall conduct a proceeding with respect to the matter con-*  
 5 *cerned, in accordance with such procedures as the Copyright*  
 6 *Royalty Judges may adopt. The Copyright Royalty Judges*  
 7 *shall act on the basis of a fully documented written record.*  
 8 *Any party to the proceeding may submit relevant informa-*  
 9 *tion and proposals to the Copyright Royalty Judges. The*  
 10 *parties to the proceeding shall each bear their respective*  
 11 *costs of participation.*

12       “(e) *JUDICIAL REVIEW.*—*Any determination of the*  
 13 *Copyright Royalty Judges under subsection (d) may be ap-*  
 14 *pealed, by a party to the proceeding, in accordance with*  
 15 *section 803(d) of this title. The pendency of an appeal under*  
 16 *this subsection shall not stay the determination of the Copy-*  
 17 *right Royalty Judges. If the court modifies the determina-*  
 18 *tion of the Copyright Royalty Judges, the court shall have*  
 19 *jurisdiction to enter its own decision in accordance with*  
 20 *its final judgment. The court may further vacate the deter-*  
 21 *mination of the Copyright Royalty Judges and remand the*  
 22 *case for proceedings as provided in this section.”.*

23               (B) *The item relating to section 1010 in the*  
 24 *table of sections for chapter 10 is amended to read as*  
 25 *follows:*

*“1010. Determination of certain disputes.”.*

1 **SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.**

2       (a) *EFFECTIVE DATE.*—*This Act and the amendments*  
3 *made by this Act shall take effect 6 months after the date*  
4 *of the enactment of this Act, except that the Librarian of*  
5 *Congress shall appoint 1 or more interim Copyright Roy-*  
6 *alty Judges under section 802(d) of title 17, United States*  
7 *Code, as amended by this Act, within 90 days after such*  
8 *date of enactment to carry out the functions of the Copy-*  
9 *right Royalty Judges under title 17, United States Code,*  
10 *to the extent that Copyright Royalty Judges provided for*  
11 *in section 801(a) of title 17, United States Code, as amend-*  
12 *ed by this Act, have not been appointed before the end of*  
13 *that 90-day period.*

14       (b) *TRANSITION PROVISIONS.*—

15           (1) *IN GENERAL.*—*Subject to paragraphs (2) and*  
16 *(3), the amendments made by this Act shall not affect*  
17 *any proceedings commenced, petitions filed, or vol-*  
18 *untary agreements entered into before the enactment*  
19 *of this Act under the provisions of title 17, United*  
20 *States Code, amended by this Act, and pending on*  
21 *such date of enactment. Such proceedings shall con-*  
22 *tinue, determinations made in such proceedings, and*  
23 *appeals taken therefrom, as if this Act had not been*  
24 *enacted, and shall continue in effect until modified*  
25 *under title 17, United States Code, as amended by*  
26 *this Act. Such petitions filed and voluntary agree-*

1        *ments entered into shall remain in effect as if this Act*  
2        *had not been enacted. For the purposes of this para-*  
3        *graph, the Librarian of Congress may determine*  
4        *whether a proceeding has commenced.*

5            (2) *PENDING PROCEEDINGS.*—*Notwithstanding*  
6        *paragraph (1), any proceeding commenced before the*  
7        *enactment of this Act may be terminated by the Li-*  
8        *brarian of Congress, with the approval of the Copy-*  
9        *right Royalty Judges. In such cases, the Copyright*  
10       *Royalty Judges shall initiate a new proceeding in ac-*  
11       *cordance with regulations adopted pursuant to section*  
12       *803(b)(6) of title 17, United States Code.*

13           (3) *EFFECTIVE PERIODS FOR CERTAIN RATE-*  
14        *MAKING PROCEEDINGS.*—*Notwithstanding paragraph*  
15        *(1), terms and rates in effect under section 114(f)(2)*  
16        *or 112(e) of title 17, United States Code, for new sub-*  
17        *scription services, eligible nonsubscription services,*  
18        *and services exempt under section 114(d)(1)(C)(iv) of*  
19        *such title for the period 2003 through 2004, and any*  
20        *rates published in the Federal Register under the au-*  
21        *thority of the Small Webcaster Settlement Act of 2002*  
22        *for the years 2003 through 2004, shall be effective*  
23        *until the later of the first applicable effective date for*  
24        *successor terms and rates specified in section*  
25        *804(b)(2) or (3)(A) of title 17, United States Code, or*

1        *until such later date as the parties may agree or the*  
2        *Copyright Royalty Judges may establish. If successor*  
3        *terms and rates have not yet been established by such*  
4        *date, licensees shall continue to make royalty pay-*  
5        *ments at the rates and on the terms previously in ef-*  
6        *fect, subject to retroactive adjustment when successor*  
7        *rates and terms for such services are established.*

8        *(c) EXISTING APPROPRIATIONS.—Any funds made*  
9        *available in an appropriations Act before the effective date*  
10       *of this Act to carry out chapter 8 of title 17, United States*  
11       *Code, shall be available to the extent necessary to carry out*  
12       *this section.*

Calendar No. 744

108TH CONGRESS  
2D Session

**H.R. 1417**

**AN ACT**

To amend title 17, United States Code, to replace  
copyright arbitration royalty panels with Copy-  
right Royalty Judges, and for other purposes.

SEPTEMBER 29, 2004

Reported with an amendment